Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1997

Ray Watson.

Petitioner

v.

University Medical Center, Mike Parker, Bill Andrews,

Respondents,

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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.11GPP

Questions Presented for Review

1.

Petitioner did not allege a claim of conspiracy in his complaint, nor did he endeavor to prove such claim. Petitioner brought a claim of discrimination against the respondents. However, the trial court misrepresented clear facts and simply concluded that a claim of conspiracy had been brought and was not proven by petitioner. Did the trial and appellate courts :

(a) abuse their discretion and violate petitioners' due process rights by granting a summary judgment on fictitious grounds ?

(b) Depart from the usual and accepted judicial procedures.

2.

In Anderson v. Liberty Lobby Inc., 477 U.S. 242, this court held that only *"material facts"* would preclude the entry of summary judgment. Petitioner submitted affidavits that created a genuine issue of material fact that would have affected the outcome of a trial.

(a) Were these affidavits sufficient to defeat a motion for summary judgment ?

(b) Did the court abuse its discretion by failing to accept petitioners' affidavits and other allegations as true ? *Catrone v. 105 Casino Corporation, 414 P 2d, 106 Nevada Supreme Court.*

(c) Does the decisions of the trial court, and subsequent affirmation by the appellate court, conflict with Anderson.?

3.

Petitioner established many genuine issues of material fact demonstrating that the defendants proffered nondiscriminatory reasons were unworthy of credence. Are these genuine issues of material fact sufficient to defeat a summary judgment in light of this courts' holding in *Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981).*

4.

Petitioner's contractual rights in Article 1V of his union contract, as well as University Medical Center policies ("UMC"), prohibited discrimination in employment, promotion and all areas of work life. Respondent Mike Parker refused to grant petitioner, the only black applicant for two full-time security positions, an interview. Petitioner was the most senior applicant and had received prior satisfactory evaluations from respondent Parker.

Parker interviewed seven other applicants, while holding that his reasons for denying petitioner an interview was based on a *"survey"* conducted in lieu of established governmental policies regarding evaluations. In his decision, the UMC Hearing Officer decided that petitioner should be reinstated and given an opportunity for the next full time position. Parker did neither. The questions for this court are:

(a) Can a public employee be denied his constitutional rights to property by a ad hoc *"survey"* arbitrarily substituted for the legally approved evaluation process established by this political subdivision ?

(b) Can a public employee be denied an interview for a position in light of the contractual and governmental policies prohibiting discrimination in promotion and employment ?

(c) In light of Hearing Officer Bill Andrews' decision that petitioner should be reinstated and given and opportunity to interview for the next full-time position, does respondents have the right to disregard his decision ?

5.

In Haines v. Kerner, 404 U.S. 519, this court held that a pro se litigant's complaint must not be dismissed unless it appears beyond a doubt, that *"he cannot get relief under any set of facts"*.

(a) Does the true and material facts of this case demonstrate, beyond a reasonable doubt, that petitioner should have been afforded his constitutional right to trial on the merits ?

(b) Does the dismissal of petitioners' claims conflict with the principles reached in Haines ?

Parties to the Proceeding

The parties to this proceeding are Petitioner Ray Watson, respondents University Medical Center (herein after referred to as ("UMC"), Bill Andrews and Mike Parker.

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Jurisdiction

The date the Ninth Circuit court of Appeals decided my case was December 15, 1997. A timely petition or rehearing was denied by the United States Court of Appeals on March 27, 1998 and a copy of the order denying rehearing appears at **A7.**

Constitutional and Statutory Provisions Involved

The constitutional provisions of the Fourteenth Amendment provides; *"No state shall make or enforce any law which shall abridge the privileges or immunizes of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law."*

The statutory provision, Section 703(a) of Title V11 of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e-2(a)(1): *(a) It shall be an unlawful employment practice for an employer-*

> *(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, condition, or privileges of employment because of race, color religion, sex, or national origin;*

STATEMENT OF THE CASE

The underlying facts of this action are simple as petitioner established a *"prima facie"* case and respondents proffered *"explanation is unworthy of credence."* Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981). Petitioner submitted proof in the form of affidavits showing obvious conflicting statements in the affidavits of respondent Mike Parker, Officer Larry Mathis and others.

Additionally, the fact of whether or not respondent Mike Parker failed to implement a hearing officers finding that petitioner be reinstated and given an opportunity to compete for the next available full-time position is an genuine issue of material fact in dispute.

A summary judgment in this action was inappropriate, since petitioners *allegations must be deemed as true.* Catrone v. 105 Casino Corporation, 414 P 2d, 106 Nevada Supreme Court. Finally, many other genuine issues of material fact exist that will affect the outcome of this suit under the governing law. *Anderson v Liberty Lobby Inc., , 477 U S, 242, 248.*

Background

During his employment at **UMC,** petitioner was intentionally discriminated against because of his race, Black, by respondents **Michael Parker, Bill Andrews and the University Medical Center**. Petitioner was a Per diem Security Officer and was denied a interview for **two** (2) available full time security positions. In addition to being the only qualified black applicant for one of the two full time security positions, petitioner had the most seniority of all applicants. Petitioner was within 60 hours of the required 2080 hours, where a full time position assignment would be mandatory.

There were a total of eight (8) per diem employees recommended for interviews by the personnel Department for those openings. Those recommended per diem employees, including petitioner, were sent to Respondent Parker for interviews. Respondent **Mike Parker** selected and interviewed the **seven white** applicants and **refused** to interview appellant, the only black qualified applicant.

At the outset, respondent Parker testified to the UMC hearing officer Bill Andrews that his decision not to grant petitioner an interview for the available positions was based upon a *written survey* (**A9**) that he conducted with his security supervisors and lead officers. Respondent Parkers' *"survey"* was arbitrarily created on the fly and employed to discriminatorily circumvent the regular University Medical Center Evaluation procedure . Attempting to have it both ways, Mike Parker **later** submitted to the trial court, a declaration from Francene Quick, who testified that she tried to contact petitioner for an interview.

He also submitted the affidavit of John Seeno, who testified that he tried to contact petitioner for an interview. Respondent Parker submitted the affidavit of Kathy Silver, who testified that petitioner was "*offered a per diem job offer at zero hours*". As can seen in the Hearing Officers Bill Andrews' decision (**A17**), **no such information was ever provided to him regarding these later submissions by Parker.** Parker did not present any of this information in the grievance procedure. All those witnesses, and their resulting testimony, suddenly appeared after petitioner filed this action.

To support his pretextual allegation that he tried to contact petitioner for an interview, Parker submitted (in their motion for summary judgment) the "*declaration*" of Francine Quick, (**A14**) and the affidavit of John Seeno (**A12**). Those persons falsely alleged that respondents had attempted to *contact* petitioner at his home for an interview. However, in petitioners' opposition to respondents' motion for summary judgment, he submitted the affidavit of Londa Francis which stated in paragraph 3:

> " *I am the only female residing at Ray Watsons' residence and no one regarding any job interviews pertaining to Ray Watson from the University Medical Center*". (**A19**)

In Respondents answer to petitioners' amended complaint, they alleged that they offered petitioner a new per diem position and he rejected said position. (**A16**). In support their allegation that they had offered petitioner a per diem position at zero hours, the respondents, Mike Parker and University Medical Center submitted the affidavit of Kathy Silvers, stating in paragraph 4:

> "*That your affiant attended a meeting with Mike Parker, director of Security Services at UMC; Blain Claypool, Assistant Administrator at UMC; Ray Watson; and Carlos Henderson, CCPEA Representative. Affiant states that during this meeting an offer of employment as a per diem security officer with zero hours was made to Ray Watson.*" (**A13**).

However, in petitioners' motion in opposition to respondents motion for summary judgment, he submitted the affidavit of Carlos Henderson in which he stated in paragraph 3 :

> *"That I met with Mike Parker, Kathy Silvers and Ray Watson in an informal meeting. At no time was Watson offered any per diem security position at zero hours."* **(A20)**

Consequently, no interview, or offer of any employment was ever granted petitioner. These facts alone demonstrate that genuine issues are in dispute , clearly sufficient to defeat a motion for summary judgment. FRCP 56.

Respondent Parkers' Ad Hoc Survey

The security officers were asked by Respondent Mike Parker to evaluate the candidates for the full time positions **(A.9)** Those supervisors and lead officers were: Lt. Kenneth Algood, Lt. John Seno, Lt. Cliff Ortego, Lead Officer **Larry Mathis**, Ed Yesco, and Newton Yuen. Respondent Parker alleged that, as a result of his survey, petitioner was ranked 12 out of 12 applicants **(A17)**. However, respondent Parkers' *survey* was not the normal UMC evaluation procedure and the "*evaluations*" were not signed, or dated by the above Lieutenants and Lead officers. Respondent Mike Parker submitted an affidavit testifying that Lead Officer Larry Mathis had participated and completed an evaluation form stating;

> *"5. That at the time which all eligible candidates were evaluated for the full-time positions, Mr. Larry Mathis was present and participated in the evaluation process"* **(A11)**.

In support of petitioners' opposition to respondents motion for summary judgment, petitioner submitted the affidavit of Larry Mathis **(A22)** in which he stated:

> *"I was a lead security officer at University Medical Center and supervised Ray Watson. I was not asked, **nor did I participate** in Mike Parker's evaluation process of the eight per diem security officers who applied for the full time position"...*

Obviously, respondent Parkers' proffered *nondiscriminatory reasons* lack credibility. This is a genuine dispute as to material facts that "*is not one sided*" and sufficient to defeat a motion for summary judgment.

Petitioner filed a grievance pursuant to article 4 of the union contract "*Discrimination Clause*" . In his decision on November 9, 1993, UMC Hearing Officer Bill Andrews **reinstated** petitioner and recommended that he be **interviewed for the next available full time position**. As previously mentioned, the respondents never complied with the hearing officer's decision.

REASONS FOR GRANTING THE PETITION

Departure from Accepted Judicial Procedure

Conspiracy Theory a Myth

The trial court deliberately dissimulated the facts petitioner brought in his complaint by stating in it order " *Plaintiff Ray Watson, proceeding in pro per, alleges that his former employer, University Medical Center (or UMC), discriminated against him based upon his race, when it failed to promote him to a full time security officer position, and when it subsequently terminated him.*" (A2) Conversely, petitioners' Amended complaint stated on count 7;

> *"That during his employment at UMC, plaintiff was intentionally discriminated against because of his race, Black, by defendants **Michael Parker, Bill Andrews and the University Medical Center**. Specifically, Plaintiff was a Per diem Security Officer and was denied a interview for two (2) available full time security positions."*

Likewise, petitioner never alleged that UMC "*discriminated against him based upon his race, when it failed to promote him to a full-time security position*". (**A2 par. 1**) The trial and appellate courts clearly abused their discretion with these misrepresentations of material facts. The trial court order also misrepresented facts by stating;

> *"Watson argues that the written evaluations were part of a conspiracy to deprive him of the position. In support of this contention, Watson offers the affidavit of one of his former supervisor,. **who stated that he was not asked to fill out an evaluation.** He also notes that the survey was unsigned and undated and accordingly unreliable assessment of his work. The fact that the evaluations were unsigned and undated, by itself, **is insufficient to establish a conspiracy.**"*

Clearly, the affidavit of security officer Larry Mathis speaks for itself. (**A22**). The trial court ignored material facts, specifically the affidavit of Mike Parker, in which he stated that Mathis was a participant in his "*survey*" The court outrageously avoided these facts trying to suggest that petitioner merely objected "*because he [Mathis] was not asked to participate.*".

Petitioner never brought a "*conspiracy theory*" in this action and the courts conclusion that it was not proved is moot. The word " *conspiracy*" first appeared in the trial courts' order and has nothing to do with the real issues proffered by petitioner.

With regards to the fact that respondents Parkers' "*survey*", the trial court' order stated; "*The fact that the evaluations were unsigned and undated, by itself, is insufficient to establish a conspiracy. Watson has had the opportunity to seek complete information concerning the evaluations and their authors through the course of discovery, but he has failed to present any evidence of a conspiracy to discriminate against him*". (**A5**).

The court knew and misrepresented the fact that Larry Mathis was one of the alleged authors and participants in respondent Parkers' *survey* (**A9**) and that petitioner has submitted proof - through the course of discovery in the form of an affidavit pursuant to FRCP 56. And again, there was no conspiracy allegation by petitioner and thus, no need to venture down that shadow road.

Clearly, petitioner brought this action in response to; (1) respondent Parkers' denying petitioner an interview for a full time security position, (2) failure to implement the findings of a hearing officer and ,(3) subsequently proffering non-credible, pretextual reasons to support his actions.

The trial and appellate courts have a professional responsibility to review the facts before them. However, in direct contrast to that responsibility, the trial court misrepresented the true facts, with the approval of the appellate court, and severely departed from the usual course of accepted judicial proceeding. Clearly these decisions call for the exercise of this courts' supervisory powers.

Direct Conflict with Anderson

The Ninth Circuits' decision is in direct conflict with the principles this court reached in *Anderson at 242.* Anderson held that genuine disputes which are not "*one-sided, and one which could be reasonably resolved by a fair minded jury in favor of either party.*". Petitioner has satisfied his burden of proving that respondents proffered "*non-discriminatory reasons*" were non-credible and that many genuine issue of material fact remain that will affect the outcome of a trial. The disputed facts of this action are;

1. Whether of not petitioner was contacted for an interview?
   (**A19**: Londa Francis Affidavit)
   (**A21**: Ray Watson Affidavit)
   (**A14**: Francene Quick Affidavit)
   (**A12**: John Seeno Affidavit)
   (**A17**: Hearing Officer Decision)

2. Whether or not Larry Mathis participated in respondents' *"survey"* used to discredit petitioner.

(**A22**: Larry Mathis Affidavit)
(**A11**: Mike Parker Affidavit)

3. Whether or not petitioner was offered a new per diem position *"at zero hours"* and he rejected same.
(**A20**: Carlos Henderson)
(**A13**: Kathy Silver Affidavit)

4. Whether or not respondent can arbitrarily create a surrogate *"evaluation"* procedure to deny a government employee his employment.

5. Whether or not UMC can ignore a Hearing Officers' decision , (a position created by legislative authority), and refuse to reinstate a government employee.

Despite the fact that petitioner submitted all the above misrepresentations and other genuine disputed issues to the appellate court in his appeal brief, the appellate court still affirmed the trial courts inappropriate summary judgment. The material facts show that this action is not *"one-sided"* as required by Anderson and other controlling case law. In fact, this court held in **Haines v. Kerner, 404 U.S. 519**, that it must be beyond any doubt that a pro se litigant cannot get relief under any set of facts. In its decision, the Ninth Circuit Court simply stated; *"We affirm for the reasons held in district court order, "* without affording petitioner a statement of the facts, a statement of the issues and the reasons on which the courts' decision rests.

The Questions Presented are Important

The trial court deliberately dissimulated the facts petitioner brought in this action and misrepresented the issue as a *"conspiracy theory"*. The first use of the word *"conspiracy"* was injected by the trial court and is not the issue brought by petitioner.

Subsequently, using this false theory, the court proceeded to deny petitioner his right to trial on the true issues and granted the respondents motion for summary judgment. Likewise, the appeals court merely affirmed this false theory and denied petitioner his constitutional right to trial.

Petitioner, a public employee and pro se litigant, not skilled in the *profession* of law, was deprived of his constitutional rights as secured by the Fourteenth Amendment and well settled case law. That deprivation was also administered by the appellate courts' memorandum decision, which departed from the principle of stare decisis and ignored genuine disputed facts presented by petitioner. By simply ignoring the Fourteenth Amendment, where the pro se litigant or persons similarly situated is concerned, the appellate court increased its chances of denying constitutional rights; since the chances of obtaining a writ of certiorari from this court is approximately one percent. The departure of the appellate court from the principle of stare decisis has caused petitioner to seek this courts' supervisory power to restore petitioners' constitutional rights and ensure the rights of those persons similarly situated.

Conclusion

Because the trial and appellate courts' decisions violate petitioners' constitutional right to trial, it is in direct conflict with *Anderson, Burdine, Catrone, Haines* and other controlling case law. For these compelling reasons, the memorandum decision of the Ninth Circuit Court of Appeals should be summarily reversed, vacated, and this action remanded to the United States District Court for the District of Nevada. In the alternative, the petition for a writ of Certeriori should be granted. Respectfully submitted,

Ray Watson, Pro Se

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED Dec. 17, 1997
Cathy A. Catterson, Clerk
U.S. Court of Appeals

Ray Watson,

Plaintiff-Appellant,

v.

University Medical Center;
Mike Parker;Bill Andrews,

Defendants-Appellees.

No. 96-17029
D.C. No. CV-95-00795-HDM

MEMORANDUM*

Appeal from the United States District Court
For the District of Nevada
Howard D. McKibben, District Judge, Presiding
Submitted December 15, 1997 **

Before: SNEED, LEAVY, and TROTT, Circuit Judges.

Ray Watson appeals pro se the district courts' summary judgment in favor of defendants in his action alleging race discrimination in employment. We have jurisdiction pursuant to 28 U.S.C. § 1291. After a de novo review of the record, **see Forsyth v. Humana, Inc.**, 114 F 3d 1467, 1497 (9th Cir.), cert. denied, 1997 WL 592548 (U.S. Dec. 1, 1997) (No. 97-504), we affirm for the reasons stated in the district courts' order on September 6, 1996.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a);(9th Cir.)

A2

ENTERED AND SERVED
Filed Sep - 6 1996
Clerk U.S. District Court
District of Nevada
By s/_____ Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ray Watson, CV-S-95-795-HDM (RLH)

Plaintiff,

vs. ORDER

University Medical Center,
Mike Parker, Bill Andrews,

Defendants.

This action is before the court on defendants' motion for summary judgment (# 27). Plaintiff Ray Watson, proceeding in pro se, alleges that his former employer, University Medical Center (or "UMC") discriminated against him based on race when it failed to promote him to a full time security officer position, and when it subsequently terminated him.

Watson, and African American, was employed as a per diem security guard at University Medical Center from January 1992 until August 1993. In his periodic employee evaluations, Watson achieved at least satisfactory rankings in all areas of his work., and his supervisors made several complimentary comments about him. However, the record also identifies approximately ten occasions upon which he was reprimanded for disciplinary violations. In August 1993, two regular full-time security positions became available at UMC. Plaintiff applied for the positions. Despite his apparent seniority as a per diem guard, plaintiff was neither interviewed nor hired for the positions. UMC contends that

its decision was based upon a written survey of security supervisors, who were asked to evaluate the candidates for the full-time positions. According to UMC, Watson scored the lowest of the twelve applicants. UMC also contends that it attempted to contact Watson for an interview, but that he failed to return the calls. Watson disputes these facts. Subsequently, UMC determined that it did not wish to employ plaintiff any longer, and his name was removed from the call list for per diem guards.

Watson initiated grievance proceedings pursuant to a union agreement. After an initial hearing affirmed the actions of management, a second hearing officer concluded that there was no evidence of discrimination, and that UMC was justified in terminating Watson. However, he recommended reinstatement because the failure of UMC to interview its only African-American applicant may have had the appearance of discrimination. UMC did not follow the hearing officers' recommendation. Thereafter, Watson filed this action, alleging a federal claim for racial discrimination, and a pendant stage claim for breach of the union contract.

To maintain an action for racial discrimination under Title V11, a plaintiff must prove, either directly or indirectly, that the employer intentionally discriminated against him or her on the basis of race. The familiar test from McDonnell Douglas Corp. V. Green, 411 U.S. 792 (1973), was recently restated by the Ninth circuit in **Warren v. city of Carlsbad,** 58 F 3d 439, 441 (1995):

> A plaintiff can establish a prima facie case of discrimination under Title V11 by establishing that (1) he or she belongs to a racial minority; (2) he or she has applied and was qualified for a job which the employer was seeking applicants; (3) he or she was rejected for the position despite his or her qualifications; and (4) the position remained open after his or her rejection and the employer continued to seek applications from other people with similar qualifications to the plaintiff.

Because the **McDonnell Douglas** test was meant to be flexible in its application, the fourth element may also be met when the position is given to an individual who is not of the same race as the plaintiff. **Cf. Lynn v. Regents of the Univ. of Calif.,** 656 F 2d 1327,1343 (9th Cir.1981); **Hagans v. Clark,** 752 F 2d 477, 482 (9th cir. 1985).

Plaintiff appears to have satisfied the **Mcdonnel Douglas** test. First, it is not disputed that he is an African-American. Second, he establishes that he was qualified for the full-time security officer position by providing copies of his periodic employee evaluations, both of which rated him as a satisfactory per diem guard. Third, it is not disputed that plaintiff was rejected for the position, and ultimately had his name removed from the call list of per diem guards. Finally, plaintiff alleges by affidavit that neither of the two applicants who were hire into full-time positions were African-Americans.

Once the plaintiff has established a prima facie case of discrimination, the employer May dispel the inference of discrimination by articulating a legitimate, nondiscriminatory reason for the employment action that was adverse to plaintiff. **Warren** 58 F 3d at 442. If the employer is able to meet its burden, then "the plaintiff has the opportunity to present evidence showing that the employers' stated reason was merely pretextual". ***Id*** at 442. (quoting **Lindahl v. Air France,** 939 F 2d 1434, 1437 (9th Cir. 1991).

As a legitimate, nondiscriminatory motive for not hiring Watson as a full-time security guard, UMC argues that it conducted a written survey of Lead security officers and Lieutenants, and that Watson received the lowest rating of the twelve applicants in the areas that were evaluated. UMC also points to Watsons' prior disciplinary record involving approximately ten infractions. As an explanation for removing Watsons' name from the per diem call list, UMC contends that it would have been required by union contract to offer plaintiff the next available full-time position, regardless of his merit, if he exceeded 2080 per diem hours. Watson worked approximately 2040 yours.

UMC argues that it did not want its next full-time officer determined by operation of the union contract, especially in light of Watsons' ratings.

In an effort to demonstrate that these reasons were merely pretextual excuses for the adverse actions, Watson argues that the written evaluations were part of a conspiracy to deprive him of the position. In support of this contention, Watson offers the affidavit of one of his former supervisors, who stated that he was not asked to fill-out an evaluation. He also notes that the surveys were unsigned and undated, and accordingly unreliable assessments of his work.

The fact that the evaluations were unsigned and undated, by itself, is insufficient to establish a conspiracy. Watson has had the opportunity to seek complete information concerning the evaluations and their authors through the course of discovery, but has failed to present any evidence of a conspiracy to discriminate against him. Rather, the informal survey demonstrates the efforts that security supervisor Michael Parker took to make sure that the applicants were objectively scored and evaluated by several supervisors on an array of factors. Further, Parker states in his affidavit that, of the supervisors who evaluated the applicants, two were Caucasian, two were African-American, one was Asian, and one was Hispanic.

Watson also contends he was the only African-American who applied for this position, and that he was not even asked to interview. UMC offers proof through the sworn affidavits of John Seeno and Francene Quick that it attempted to contact him, and that a message was left at his residence. In response, Watson offers the affidavit of his wife Londa Francis, who stated that no one called regarding an interview. However, in her deposition, Francis said she often took messages from UMC during this time period without being told exactly why they were callir.g.

On these facts, even when all inferences are reasonably drawn in Watsons' favor, Watsons' opposition lacks the kind of substantive evidence that the Ninth Circuit found to support the inference of pretextual dismissal in **Warren.** See 58 F3d at 443. Fro example, there are no statistics suggesting a pattern of discriminatory practice at UMC. To the contrary, the affidavit of

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Michael Parker demonstrates that at least two African-American, on Asian-American, and one Hispanic held supervisory positions within the security department of UMC at the time of Watsons' termination. Further, Parkers' affidavit shows that there were twenty-five full-time security guards employed at that time, "comprising fourteen whites, six blacks, three Hispanics, and two Pacific Islanders." Ex. D to motion (#27).

Also, as discussed above, Watson has not reasonably challenged the objectivity of the evaluations, and there is no other evidence of discrimination in the workplace (such as derogatory racial comments). **See Warren.** 58 F3d at 443.

Plaintiff also alleges breach of employment contract. Plaintiff conceded several times in his deposition that he was an at-will employee, and the union agreement under which he was employed expressly states the same. While Article 11 of the contract states that per diem employees are covered by certain contract provisions, none of those provisions give rise to a contract for continued employment for the per diem employee. In relation to this lawsuit, Watson was protected by the contract only Insofar as racial discrimination was prohibited in employment practices. Thus, because there has not been a sufficient showing of discrimination to survive summary judgment, there is also no basis for Watsons' contract claim.

Accordingly, defendants' motion for summary judgment (#27) is granted, and defendant Bill Andrews' separate motion for summary judgment on the issue of absolute and qualified immunity (#37) is denied as moot.

It is so ORDERED,

Dated this 30th day of August, 1996,

/s _____
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED Mar 27, 1998
Cathy A. Catterson, Clerk
U.S. Court of Appeals

Ray Watson,
Plaintiff-Appellant,

v.

University Medical Center;
Mike Parker; Bill Andrews,
Defendants-Appellees.

Before: SNEED, LEAVY, and TROTT, Circuit Judges

Appellants' motion for publication is denied. The panel has so voted to deny appellants' petition for rehearing. Judge Trott has voted to reject the suggestion for rehearing en banc, and Judges Sneed and Leavy have so recommended.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to her hear the matter en banc. See Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

A8

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(Filed 12/17/97)

Ray Watson Appellant, Vs University Medical Center, Mike Parker, Bill Andrews, Appellees.	No. 9617029 CV-S-95-795 HDM(RHL)

APPEAL FROM the United States District Court for the District of Nevada (Las Vegas). THIS CAUSE came to be heard on the TRANSCRIPT OF Record from the United States District Court for the District of Nevada (Las Vegas) and duly submitted.

ON CONSIDERATION WHEREOF, it is now ordered and adjudged by this court, that the judgment of said district court in this cause be and hereby AFFIRMED.

Filed and entered 12/17/97

A9

MEMORANDUM
SECURITY SERVICES

To: Blain Claypool, Associate Administrator
From: Michael Parker, Director of Security Services
Subj: Employee Selection Process
Date: August 24, 1993

In reviewing the applicants for the full time employee position, I decided that it would be best to get input from the Lieutenants and Lead Security officers. I like to include them in the decision making process whenever I can so that we build a team relationship. I explain to them that I take their input with high regard but the final question is my responsibility.
Those present for this process were:

Lt Ken Allgood	Lt. John Seeno	Lt. Cliff Ortego
S/O Larry Mathis	S/O Ed Yesko	S/O Newton Yuen

I provided a form to each of these persons, which I made using the UMC evaluation form as a format. They were seated and told not to discuss their feelings or judgment with each other. I instructed them to fill out the forms using a scale of 1 to 10 (using 10 as best) in each of the categories listed. They were also instructed that if they felt they could not honestly grade on an individual for any reason that they should leave the form blank.

When I collected the forms, I simply added the scores and then averaged those figures. I averaged so that if one officer was graded by six persons and another officer was graded by three, it would be fairly analyzed.
The twelve per diem officers were graded in the following order:

1) Lester Rowe	(63)	2) Brian Dias	(60)
2) David Vernon	(55.4)	4) Warren Brenn	(55.4)
5) Mark Ballard	(55.5)	6) Wayne Smith	(51.6)
7) John Villano	(50.6)	8) Chris Bubel	(49.1)
9) Lee Cain	(47)	10) Don Hale	(44.75)
11) Calvin Wallace	(42.2	12) Ray Watson	(36.5)

A10

The officers graded as number two (2) Mr. Brian Dias(a Pacific Islander), and number four (4) Mr. Warren Brenn (a Caucasian), were selected for the full time positions.

A11

Affidavit of Michael Parker

State of Nevada)
)SS:
County of Clark)

Michael Parker, being duly sworn deposes and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.
2. That your affiant makes this affidavit in support of Defendants' Motion for Summary Judgment.
3. That the one of the two officers selected for the full time position was Pacific Islander, and the other officer selected was Caucasian.
4. That the job description for the position held by the plaintiff required a valid Nevada Drivers License. (Exhibit "A" Attached)
5. That at the time which all eligible candidates were evaluated for the Full time position, Mr. Larry Mathis was present and participated in the Evaluation process.

Further Affiant Sayeth Naught

/s _____ /s Claudette Harrington
Michael Parker Notary Public

AFFIDAVIT OF JOHN SEENO

State of Nevada)
SS:
County of Clark)

John Seeno, being first duly sworn disposes and states as Follows:

1. That your Affiant is over the age of eighteen (18) years and is a resident of Clark, Nevada.
2. That your Affiant makes this Affidavit is support of Defendants' Motion for Summary Judgment.
3. That your affiant is a Security Lieutenant at University Medical Center.
4. That in order to schedule Ray Watson for an interview regarding a full-time security position to be is August of 1993, your Affiant attempted to call Mr. Watson during affiant' regular scheduled shifts on Wednesday Thursday evening. Affiant spoke to a woman and asked her to have Mr. Watson either call Affiant or the directors' office at his Earliest convenience.

FURTHER AFFIANT SAYETH NAUGHT

/s _____
John Seeno

Subscribed and Sworn to before me
This 29th day of February, 1996.
/s Jeannette Bertoch
NOTARY PUBLIC in and for Said
County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Jeannett E. Bertoch
My Appointment Expires July 22, 1998

A13

AFFIDAVIT OF KATHY SILVER

State of Nevada)
) SS:
County of Clark)

Kathy Silver, being first duly sworn deposes and states As follows:

1. That your Affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.
2. That your Affiant makes this Affidavit in support of Defendants' motion for Summary Judgment.
3. That your Affiant was Senior Associate Administrator, Marketing and Human Resources at University Medical Center.
4. That your Affiant attended a meeting with Mike Parker, Director of Security Services at UMC; Blain Claypool, Assistant Administrator at UMC; Ray Watson and Carlos Henderson, CCPEA Representative. Affiant states that during this Meeting, and offer of employment, , as a per diem Security officer at zero hours, was made to Ray Watson.

FURTHER AFFIANT SAYETH NAUGHT

/s _____
Kathy Silver

SUBSCRIBED AND SWORN to before me
This 1st day of March , 1996.
/s Linda Lewis
NOTARY PUBLIC and for said
County and State

A14

DECLARATION OF FRANCINE QUICK

I Francene Quick declare as follows:

1: Declarant is over eighteen (18) years.

2. Declarant currently resides at 3725 W. Harbor, Bettendorf Iowa, 52722.

3: Declarant makes this Declaration in support of defendants' Motion for Summary Judgment.

4: Declarant was a Security Secretary at University Medical Center.

5. In order to schedule Ray Watson for an interview regarding a full-time security position to be filled on August of 1993, Declarant attempted to call Ray Watson on Wednesday Afternoon, all day Thursday and Friday morning.

6. Declarant left several messages to call the directors' office at his earliest convenience. Declarant did not talk to Mr. Watson personally until Friday around noon when he returned Declarants' calls.

7. I declare under penalty of perjury under the laws of the state of Nevada that the foregoing is true and correct and that this Declaration was executed on the 3rd day of March, 1996, Battendorf, Iowa.

/s _____
Francene Quick

Brian C. Whitaker, Esq.
Rawling, Olson, Cannon.
Gromley & Desruisseaux
301 Clark Avenue, Suite 1000
Las Vegas, Nevada 89101
(702)384-4012

Attorneys for Defendants
University Medical Center,
Mike Parker, Bill Andrews

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OD NEVADA

Ray Watson, Plaintiff, v. University Medical Center, Mike Parker, Bill Andrews. Defendants.	Case No. CV-5-95-795 (RLH)

ANSWER TO SECONDED AMENDED COMPLAINT
(Jury Trial Requested)

COME NOW Defendants, University Medical Center, Mike Parkerand Bill Andrews, and answer Plaintiffs' Seconded Amended Complaint as Follows:

FOURTH DEFENSE

Answering paragraph 9 of Plaintiffs' First Cause of Action, Defendants admit that a decision was rendered by University Medical Center Hearing Officer Bill Andrews in which he indicated that he felt Plaintiff should be reinstated on a per diem basis with " the opportunity to improve on weaknesses as stated in the management review, and if full improvement

is made, he should be given an interview on the next full-time opening in the department". Plaintiff was offered a new per diem employee position, but such position was rejected. Defendant denies each and every remaining allegation set forth in paragraph 9 of plaintiffs' complaint.

Defendants respectfully request a trial by trial in this action.

DATED this 7th day of February, 1996
Rawlings, Olson, Cannon
Gromley & Desruisseaux

/s _____
Brain C. Whitaker, Esq.

A17

University Medical Center
Grievance Hearing
File: Grieve \Watson

To: Diana Streuber, Chief Steward CCPEA
From: Bill Andrews, Internal Auditor \Hearing Officer
Subject: Ray Watson's Grievance (2d Step)
Date: November 9, 1993

On November 4, 1993, at 10:30 AM, a hearing was held for Ray Watsons' grievance. Mr. Watson was a per diem security officer for the hospital. Mr. Watson is claiming discrimination for not being interviewed for a full-time position as a security officer. He wants reinstatement as a full-time employee with back pay.

Evidence and testimony were reviewed in connection with the discrimination claim by Ray Watson. Present at the hearing were the grievant; Carlos Henderson, CCPEA rep; and Mike Parker, Director of Security.

In reviewing the written evidence and testimony, I have found the following:

(1) There is no written policy at UMC stating that an applicant for a job is assured and interview.

(2) Mr. Parker submitted sufficient documentation stating why Mr. Watson was not interviewed for the full-time position. (such as: divulging privileged information, improper processing of patients' personal property, and per diem employees evaluation done by department supervisors ranking him 12 out of 12)

(3) There were 7 or 8 applicants, including Mr. Watson, sent to Mr. Parker for an interview. All were interview for the position except Mr. Watson. Mr. Watson was the only African-American who applied. This <u>may give the appearance of discrimination.</u>

Based on the testimony and evidence presented, I feel that Mike Parker did not discriminate on the basis of race. Although as stated before, it may give the appearance of discrimination since Ray Watson was the only African-American who was recommended for an interview and did not get one. I feel UMC Administration should write a policy for the criteria to receive an interview. Also, reinstate Ray Watson on per diem with the opportunity to improve on weaknesses as stated in the Management Review, and if improvement is made, he should be given an interview for the next full-time opening in the department. Mr. Watsons' request to be reinstated as a full-time employee with back pay is denied.

Cc: Bernard Turk, Director of Labor Relations
Jean Harper, Coordinator of Labor Relations
Mike Parker, Director of Security
Blain Claypool, Assistant Administrator

A19

Affidavit of Londa Francis

State of Nevada)
) SS:
County of Clark)

Londa Francis, being first duly sworn deposes and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this affidavit in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

3. I am the only female residing at Ray Watson's residence and no one ever called me regarding any job interviews at the University Medical Center.

Further Affiant Sayeth Naught.

/s_____
Londa Francis

SUBSCRIBED AND SWORN to and before me
this 5th day of May, 1996.
/s Angela Desmoni
Notary Public In and For Said
County and State

A20

Affidavit of Carlos Henderson

State of Nevada ,
) SS:
County of Clark)

Carlos Henderson, being first duly sworn deposes and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.
2. That your affiant makes this affidavit in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

3. That I am a CCPEA Representative and represented Ray Watson in grievance meetings occurring on September 7, 1993 and November 4, 1993.

4. That Mike Parker and UMC submitted information to Hearing Officer William Andrews, who rendered and decision that Watson be re-instated.

5. That I met with Mike Parker, Kathy Silver and Ray Watson in an informal meeting. At no time was Watson offered any "per diem security position at zero hours".

Further Affiant Sayeth Naught.
/s_____
Carlos Henderson

SUBSCRIBED AND SWORN to and before me
this 30 th day of May, 1996.
/s Bernard Turk
Notary Public In and For Said
County and State

A21

Affidavit of Ray Watson

State of Nevada)
) SS:
County of Clark)

Ray Watson, being first duly sworn deposes and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this affidavit in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

3. That Defendants never called my residence to inform or schedule me for a job interview regarding any full-time security positions to be filled at University Medical Center.

4. That based on Article 11, par. 3 of CCPEA union contract, and for the articles of the contract that were actionable, I am not an at will employee.

Further Affiant Sayeth Naught.

/s_____
Ray Watson

SUBSCRIBED AND SWORN to and before me this 5th day of May, 1996.
/s Angela Desmoni
Notary Public In and For Said
County and State

A22

Affidavit of Larry Mathis

State of Nevada)
) SS:
County of Clark)

Larry Mathis, being first duly sworn deposes and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this affidavit in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

3. That I was a Lead Security Officer at University Medical Center and supervised Ray Watson.

4. That I was not asked, nor did I participate in Mike Parker's evaluation process of the eight per diem security officer who applied for the full-time security position.

Further Affiant Sayeth Naught.

/s_____
Larry Mathis

SUBSCRIBED AND SWORN to and before me
this 4th day of May , 1996.
/s Louise Sanders
Notary Public In and For Said
County and State

Supreme Court, U.S.
FILED
JUL 24 1998
OFFICE OF THE CLERK

No. 97-2078

In The

Supreme Court of the United States

October Term, 1997

RAY WATSON,

Petitioner,

v.

UNIVERSITY MEDICAL CENTER, MIKE PARKER, and BILL ANDREWS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PETER M. ANGULO, Esq.
Counsel of Record
301 E. Clark Ave., #1000
Las Vegas, Nevada 89101
(702) 384-4012

Counsel for Respondents University Medical Center, Mike Parker and Bill Andrews

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit correctly held Petitioner failed to provide any evidence that the reasons identified by the employer for its rejection of Petitioner's application for employment or interview were pretextual.

2. Whether the Ninth Circuit correctly affirmed the decision that no evidence supporting a claim for breach of a Union contract existed.

PARTIES TO THE PROCEEDING

Respondents do not disagree with the characterization of the parties to this proceeding identified in the Petition for Writ of Certiorari.

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JURISDICTION

On September 6, 1996, the Honorable Judge Howard D. McKibben of the United States District Court for the District of Nevada entered and served an Order which dismissed Petitioner's litigation in its entirety.[1] Thereafter, this matter was timely brought before the Ninth Circuit Court of Appeals and was subjected to its briefing schedule. Upon receipt of the briefs, the Ninth Circuit Court of Appeals properly affirmed the decision of the District Court. Petitioner's Appendix at A1, A8. Petitioner sought rehearing which was ultimately denied on March 27, 1998. *Id.* at A7. Thereafter, this Petition for Writ of Certiorari was filed with the Clerk within ninety (90) days after entry of that decision. Accordingly, jurisdiction for this matter is found pursuant to Supreme Court Rule 13(1), (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents concede Title VII, 42 U.S.C. § 2000(e), as stated by Petitioner on page 8 of his Petition is the relevant statutory provision in this matter.

STATEMENT OF THE CASE

In Petitioner's Complaint, filed on August 18, 1995, he asserted a violation of his constitutional rights to be

[1] A complete copy of the Order is found in Petitioner's Appendix beginning at page A2.

free from racial discrimination pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 2000(e). On January 31, 1996, he filed a Second Amended Complaint making those same accusations. Respondents' Appendix ("RA") 1. Essentially, Petitioner – a black male – has asserted he was employed for a number of years at the University Medical Center (hereinafter "UMC") as a per diem security officer; he was ultimately denied an opportunity to *interview* for one of two available full-time security officer positions. He has asserted this failure was the result of intentional discrimination because of his race by UMC and Respondent PARKER. RA 3 at ¶ 7. He further argued UMC failed to comply with suggestions from Hearing Officer William Andrews that UMC provide Petitioner an interview on the next full-time opening in the Department. RA 4-5 at ¶¶ 12-14. On the basis of these two events, he has claimed damages.

From 1992 to 1993, Petitioner was employed part-time by UMC. His employment relationship with UMC was as a per diem employee. RA 9. As a per diem security officer, Petitioner had no regular hours to work; in other words, he was "on-call." RA 10. His application for employment with UMC clearly cautioned simply being a per diem employee *may not* lead to full-time employment. RA 34.

Mr. Parker was, during the relevant time period, the Director of Security Services at UMC. RA 43. The sworn and unopposed testimony of Mr. Parker shows, out of twenty-five (25) full-time security officers at UMC, fourteen (14) were White, six (6) were Black, three (3) were Hispanic, and two (2) were Pacific Islanders. *Id.* In the course of working with UMC, Petitioner worked with

Supervisors Mathis, Yesko, Seeno, Ortego, Yuen, and Allgood. RA 10-12. His sworn testimony was that each of these individuals were generally obstreperous – as was he, himself. RA 12-14.

In July or August of 1993, there was an opening for two full-time security guard positions at UMC. RA 15. Petitioner indicated he wished to be considered for the position. Of the eight (8) individuals within the department who applied for the position, David Brenn and Brian Diaz[2] were ultimately selected to fill those positions. RA 16-17.

Petitioner was never interviewed; he claims he was "better qualified" than the two individuals who ultimately received the positions – based on his "glowing" annual evaluation. RA 17-18. However, in his December 1992 job evaluation, it is undisputed he was noted as having a tendency to take his job "a little too lightly" and needed to be more attentive to the details of his job. RA 52.

Independent evaluations were given on each of the applicants (and four other non-applicants) for the two full-time positions by supervisors in the Security Department at UMC.[3] RA 18-20. The supervisors were told not to discuss their feelings or judgments with each other but to grade each of the per diem officers honestly. RA 46. The resultant scores showed Petitioner scored slightly higher in areas of conduct, attendance and professional

---

[2] Mr. Diaz is a Pacific Islander. RA 47.

[3] The racial mix of the supervisors were two Caucasians, two Blacks, two Asians, and one Hispanic. RA 43-44 at ¶ 5(A).

appearance, but consistently scored *poorly* in areas of quantity and timeliness of work output, quality of work, knowledge and skill, and dependability.[4] RA 54-61. Indeed, of the twelve (12) per diem officers graded, Petitioner ranked twelfth. *Id.*; RA 43.[5]

In addition to his evaluation problems, Petitioner was also disciplined ten (10) times for improper behavior *in 1993 alone*. RA 44, 47-48. He received discipline for

---

[4] Petitioner has no evidence the evaluations were falsified, or that they were done for other than the purpose of evaluating applicants for the two full-time positions; likewise, he has no understanding whether his evaluation was done any differently than any one else's. RA 19-20.

[5] Mr. Mathis did not *recall* participating in this particular process. However, each of the other participants, including Mike Parker, submitted Affidavits stating there *was* an evaluation process which incorporated Petitioner. This process occurred on or about July 8, 1993. RA 62-66. The process included filling out forms for the twelve (12) per diem employees assessing their various qualifications without input being received from Director Mike Parker in this process. *Id.* Those Affidavits further indicate Mr. Mathis was present. In addition, one of the undisputed facts in the matter as it was brought before the District Court was that payroll information showed Mr. Mathis had worked one hour and twenty minutes of overtime on July 8, 1993 (the date the evaluations were conducted) which was the same amount of overtime shown for each and every one of the participants in that process. This information, coupled with his failure to recall the event – as opposed to a specific statement he never participated in the event – support that Larry Mathis participated in the procedure. Even setting aside Mr. Mathis' evaluation, the unquestioned result is that Petitioner was still ranked twelfth out of twelve per diem employees.

such things as divulging privileged information and failing to follow the policies of UMC – *prior* to his application for the full-time position. *Id.;* RA 22-24; RA 67-71. His behavior was such that he could have been fired at any time for his mistakes. RA 29.

There is little question Petitioner was not an ideal employee and was certainly no lock for the next open position. There was nothing in the Union contract or any policy which required that merely because one applicant had more hours than another applicant, they were entitled to preference. RA 31-32. Petitioner conceded, however, the issue was not whether he should have received an employment *offer* – simply whether he should have been allowed the opportunity to *interview*. RA 28.

Yet the evidence showed attempts were made to contact Petitioner to schedule an interview. Francine Quick was employed as a Security Secretary at UMC during the time the two full-time security positions were open. In order to schedule Petitioner for an interview, she attempted to call him on Wednesday afternoon, all day Thursday, and Friday morning. RA 73. Likewise, John Seeno – a Security Lieutenant at UMC – attempted to contact Petitioner to come in for an interview regarding the full-time security position. RA 74. These attempts were made on Wednesday and Thursday evening. During that time, he spoke to a woman and asked her to have Petitioner call him or the Director's office at his earliest convenience.

Petitioner's own wife testified she received numerous phone calls from UMC in the months of July and August, 1993. RA 77-78. She was unable to establish

that she definitely did *not* receive phone calls on this issue during the pertinent time period.[6] RA 75-76. By the time Petitioner finally chose to return the calls, it was too late to allow him to interview for the position. That Petitioner chose not to return the calls until later is, in actuality, the primary reason why the interview was not had.

Based on Petitioner's disciplinary history, his poor evaluation, and his failure to return the calls, Mr. Parker determined the interview process could conclude without Petitioner's active participation. See RA 43-45. Accordingly, the jobs were tendered to the two higher scoring, qualified applicants from the same pool – one of whom was an acknowledged minority.

Of the eight (8) people who applied, Petitioner was the only Black applicant (RA 20); however, he was not the only minority. When asked why he thought he was being discriminated against, Petitioner specifically did not identify *race* as a factor. Instead, he claimed he was passed over because he was "an asshole." RA 20-21. He claimed the supervisors in place were a bunch of "maggots" and had they given him that full-time position, they were afraid he would "expose their weaknesses as managers, supervisors, lieutenants, the whole nine yards." *Id.*

During the duration of his employment at UMC, Petitioner acknowledges he was only an at-will

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[6] The best inference Petitioner can make from these facts is the phone calls were made but the specific purpose behind making the calls (to have Petitioner come in for the interview) were not necessarily communicated to the person answering the phone.

employee. RA 25. The Union representative testified Petitioner was always considered a per diem employee under the contract. RA 83. That contract mandated UMC would provide Petitioner a full-time security officer position without competition if he had logged two thousand and eighty hours (2,080) hours. RA 90. Because he was approaching these hours, and due to his poor work history at UMC, he was ineligible for a callback. It was, without question, UMC's right to do so. *Id.* Further, the application for employment clearly warned being a per diem employee was no magical talisman to give rise to permanent employment. RA 34.

This decision notwithstanding, UMC still offered Petitioner continued employment. Indeed, he was given an opportunity to be employed at UMC on a per diem basis starting with zero (0) hours again. RA 92. Petitioner refused.[7]

The facts of this case show UMC originally hired Petitioner. They did so knowing he was Black. They even did so knowing he had been convicted of an embezzlement charge. RA 36. They tried, from that point forward, to help him improve in performing his job duties and employment up to the point where a decision needed to be made about giving him a full-time position without

---

[7] When asked why he thought UMC made the decision regarding his termination, *again* Petitioner refused to point to his race as a factor. Instead, he claimed the reason he was discriminated against and/or terminated from his employment with UMC was simply because he *intimidated* his supervisors. RA 26-27. This only makes sense since there were other black security officers working for UMC on a full-time and per diem basis. RA 30-31.

competition. Based on concerns about his work performance over the prior year and given his continually decreasing performance at work, the decision was made he was not the type of employee UMC wanted in its ranks and, therefore, he was made ineligible for callbacks. There is no evidence indicating, in any way, *that* decision was made based on race.

Pursuant to Article V, Section 1A, of the Agreement between the University Medical Center and Clark County Public Employees Association, the manager has the authority to select from the pool of applicants those persons whom she or he feels are qualified. RA 88. Further, Article XI, Section 1, of that Agreement states a per diem employee's eligibility for work scheduling can be discontinued at any time at the sole discretion of UMC *without* recourse through the grievance and arbitration procedures or discipline appeal procedures of that Agreement. RA 89-90.

After not obtaining the position of full-time employment and being made ineligible for callbacks, Petitioner went through the established grievance process. The first grievance hearing resulted in a finding of no discrimination. RA 93-95. In that hearing, testimony and evidence was presented. The Hearing Officer, Lynn Huff, found sufficient justification existed for Mr. Parker to justify not interviewing Petitioner. *Id.* The hearing officer further determined the decision to not provide an interview was appropriately made under Article V, Section 1(A). *Id.* Additionally, it was determined the decision of UMC to deem Petitioner as ineligible for per diem employment was properly based in accord with Article XI, Section 1. RA 95.

> Based on the evidence presented, the decisions made by management were within the scope of his authority and were supported with evidence that the employee was not qualified. Furthermore, the decisions were not found to be racially motivated and, therefore, do not reflect any racial discrimination. It is my decision to uphold the action of management, the ineligibility of Ray Watson stands.

Id. Upon receipt of this Order, Petitioner forced the second step of the grievance procedure. In a hearing before Bill Andrews, evidence and testimony were again set forth regarding claims of discrimination. As a result, Mr. Andrews stated he felt "Mike Parker did not discriminate on the basis of race." RA 97. However, he conceded an appearance of discrimination was "possible" since Petitioner was the only applicant who did not get an interview. If it was appropriate, he *suggested* Petitioner be given an opportunity to interview on the next full-time opening in the Department. However, the request to be reinstated as a full-time employee with backpay was denied. *Id.* Thereafter, the instant litigation was filed.

The only issue set forth at the hearings (conducted under Article XI, ¶ 3 of the Union contract with UMC) was whether there was discrimination in the interviewing process. Both hearing officers determined there was not.

The question is whether this evidence, properly presented without contravention before the District Court and the Ninth Circuit Court of Appeals, establishes a sufficient basis to warrant the dismissal of the litigation by Judge McKibben and, later, by the Ninth Circuit Court of Appeals. It is respectfully submitted it does.

LEGAL ARGUMENT

I. SUMMARY JUDGMENT IS APPROPRIATE WHEN INSUFFICIENT FACTS ARE ASSERTED

"Summary Judgment procedure is properly regarded not as a disfavored procedural shortcut but rather as an intrical part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). When a party fails to establish the presence of a genuine issue of material fact, then the litigation must be dismissed. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In proceeding forward with the Motion for Summary Judgment, there is a burden-shifting phase that takes place. The moving party must first establish the absence of a genuine issue of material fact. The non-moving party is entitled to oppose that position and bring forth evidence which, if believed, would establish a basis for denying the Motion. A party may not, however, in an attempt to avoid summary judgment, manufacture issues

of fact by submitting conflicting sworn statements by that party. *Kennedy v. Allied Mutual Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991). Likewise, mere allegations or denials, unsubstantiated hope and threadbare conclusory statements are all insufficient once the moving party has met its initial burden. *Richards v. Nielsen Freightlines*, 602 F. Supp. 1224, 1231 (E.D. Cal. 1985), *aff'd*, 810 F.2d 898 (9th Cir. 1987).

Petitioner accepts, apparently, that he established a prima facia case of discrimination. However, a legitimate non-discriminatory motive for not hiring him was also established. At that point, Petitioner had the obligation to present evidence showing the stated reasons for his non-interview was merely pretextual.

It is with this point that Petitioner apparently takes umbrage. However, as will be seen in the following sections, Petitioner failed to establish sufficient evidence to support his burden of proof under either one of the two claims remaining. Accordingly, the decision by the Ninth Circuit was absolutely correct.

This is not the type of case warranting the intense scrutiny provided by this Honorable Court in a certiorari setting. There is no dispute as to the extant law, no division among the Circuits, no pressing issue of law or fact that needs to be decided. This is simply a run-of-the-mill case in which Petitioner has failed to establish the necessary proof to avoid the Court's exercise of its summary judgment powers. Accordingly, certiorari should not be granted.

II. BASED ON PETITIONER'S EVIDENTIARY DEARTH, THERE WAS NO TITLE VII ACTION[8]

The summon bonum of Petitioner's claims in this case is his allegation he was subjected to racial discrimination in

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[8] As indicated, Petitioner has filed this action under 42 U.S.C. § 1983 and Title VII – for the exact same events. Of itself, § 1983 contains no substantive rights; it is simply a conduit through which an individual may obtain redress for violation of rights. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 617-18 (1979). As Justice Stewart noted in his dissent in *Chapman*, when "a state official is alleged to have violated a federal statute which provides some comprehensive enforcement scheme, the requirements of that enforcement procedure may not be bypassed by bringing suit directly under § 1983." 441 U.S. at 673 n.2. When a § 1983 action is based on the claim that Title VII is violated, it is respectfully submitted Title VII provides the exclusive remedy. *See Day v. Wayne County Board of Auditors*, 749 F.2d 1199, 1204 (6th Cir. 1984). A party cannot bring an action under § 1983, based upon Title VII allegations, against an individual or organization who could not be sued directly under Title VII. *Guy v. City of Phoenix*, 668 F. Supp. 1342 (D. Ariz. 1987).

> The effect of allowing a plaintiff to bring an action under § 1983 based upon Title VII against a defendant who could not be sued directly under Title VII would be to enlarge the relief available to one bringing an action for violation of Title VII. Plaintiffs proceeding under § 1983 for violation of Title VII would obtain a substantive enlargement of the latter if they were able to pursue a class of persons immune from actions brought directly under Title VII.

Huebschen v. Dept. of Health & Social Services, 716 F.2d 1167, 1170 (7th Cir. 1983). Petitioner cannot pursue, within the context of this litigation, a § 1983 action *and* a Title VII action for the exact same events. Since his claims were based solely on allegations of

obtaining an interview for potential advancement and, further, that such action violated the clear statutory confines of 42 U.S.C. § 2000(e) – better known as Title VII.

> The objective of Congress in enacting Title VII is plain from the language of the statute. It is to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of quality employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they offer a "freeze" of the status quo of prior discriminatory employment practices.
>
> . . . .
>
> Congress did not intend by Title VII, however, to guarantee a job to every person who follows the qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress had proscribed.

Griggs v. Duke Power Co., 401 U.S. 424, 429-31 (1971). Title VII, therefore, only prohibits *real* employment discrimination on the basis of race, color, religion, sex and national origin.

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discrimination, analysis of this litigation under Title VII – is proper. Even if this Court chooses to disagree with this analysis, the facts of this case do not sustain due process argument either. Petitioner did not contest this argument on appeal.

To maintain an action for racial discrimination under Title VII, Petitioner must prove – either directly or indirectly – his employer intentionally discriminated against him on the basis of race.

> A plaintiff can establish a prima facia case of race discrimination under Title VII by establishing that (1) he or she belongs to a racial minority; (2) he or she applied and was qualified for a job for which the employer was seeking applicants; (3) he or she was rejected for the position despite his or her qualification; (4) the position remained open after his or her rejection and the employer continued to seek applications from other people with similar qualifications to plaintiff.

Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995). The last element may also be met when the position was given to an individual who is not of the same race as the complainant. *Hagans v. Clark*, 752 F.2d 477, 482 (9th Cir. 1985); *Lynn v. Regents of the University of California*, 656 F.2d 1337, 1343 (9th Cir. 1981).

The question of whether the claimant is "qualified" has never been clearly resolved by this Court. However, in a footnote in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 358 n.44 (1977), discussing the *McDonnell-Douglas* approach for establishing a prima facia case, it observed the

> alleged discrimatee [must] demonstrate at least that his rejection did not result from the two most common legitimate reasons on which an employer might rely to reject a job applicant: an absolute or relative lack of qualifications or the absence of a vacancy in the job sought.

The Ninth Circuit allows the prima facia case to be shown upon absolute qualifications – leaving it to the employer to present a legitimate, non-discriminatory reason for its actions. *Lynn*, 656 F.2d at 1344.

The establishment of the prima facia case creates a presumption of unlawful discrimination. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). The burden then shifts to the employer "to articulate some legitimate non-discriminatory reason for the employee's rejection." *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

> The defendant need not persuade the court that it was actually motivated by the proffered reasons. . . . It is sufficient that the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for plaintiff's rejection.

Burdine, 450 U.S. at 254-55. If this burden is satisfied by the employer, the claimant must be afforded a fair opportunity to show the employer's stated reason for the rejection was, in fact, pretextual. *McDonnell-Douglas*, 411 U.S. at 804. However, the only concern is whether the employer honestly believes in the reasons it offers. *McCoy v. WGN Continental Broadcasting Co.*, 957 F.2d 368, 373 (7th Cir. 1992). Indeed, the court cannot act as a "superpersonnel department that re-examines an entity's business decisions." *Id.* "Discrimination law would be unmanageable if disgruntled employees – the friends of the plaintiff

and often people in the same legal position as the plaintiff – could defeat summary judgment by affidavits speculating about the defendant's motives." *Visser v. Packer Engineering Associates, Inc.*, 924 F.2d 655, 659 (9th Cir. 1991).

In this case, the initial establishment of a prima facia case was held by Judge McKibben to be met. Petitioner belongs to a protected minority class; established he was minimally qualified for the full-time security officer position; was rejected for the position and ultimately had his name removed from the call list of per diem guards; and, finally, alleged neither of the two applicants who were hired in the full-time positions were Black.

In *Smith v. Flax*, 618 F.2d 1062 (4th Cir. 1980), an employee claimed to be the subject of disparate treatment. The plaintiff contended he had versatility and was competent to perform a certain job. In short, he believed himself to be qualified. The court held, however, the plaintiff's perception of himself was not relevant; "[i]t is the perception of the decision maker which is relevant." 618 F.2d at 1067. In this case, UMC has shown the individuals who were hired held required skills and lacked Petitioner's discipline problems. This made them "more" qualified than Petitioner – or at least more desirable.

Petitioner has been unable to show any evidence of discriminatory intent or that his treatment was pretextual in nature. He has conceded he has no evidence of discriminatory intent, practice, policy, or behavior on the part of UMC, Mike Parker or Bill Andrews. He has been able to show no discriminatory comments or other behavior on the part of UMC, Mr. Parker or Mr. Andrews which

in any way implies discriminatory behavior or motivation in the employment decision taken regarding Petitioner. All he has is naked surmise. Yet, "[m]ere assertions of discriminatory motive and intent" are inadequate to withstand summary judgment. *Foster v. Arcata Assoc.*, 772 F.2d 1453, 1459 (9th Cir. 1985), *cert. denied*, 475 U.S. 1048 (1986).

In this case, Petitioner has, at best, been barely able to establish a prima facia case. However, assuming – as Judge McKibben did – that the prima facia case was established, in cannot be gainsaid sufficient evidence was presented by UMC to rebut the presumption of discriminatory intent in the treatment Petitioner received at the hands of UMC and its employees.

Clearly an independent survey of supervisors was taken in which Petitioner ranked twelfth out of twelve employees potentially eligible for this position.[9] Moreover, Petitioner's increasingly declining performance,

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[9] Assuming arguendo Petitioner's contention that Larry Mathis did not participate in the evaluation process is correct (despite the clear factual evidence that disagrees with this), this Court must ask itself what effect removing Mr. Mathis from the evaluation survey may have had on Petitioner's claims. Clearly the answer is "none." Petitioner still would have been the lowest ranked applicant. He still had the discipline problems. He still would have been called and not returned the phone calls to set up the potential interview. Mr. Parker would still have made the ultimate decision that Petitioner's participation in the application process was not essential – having found two qualified individuals who could fill the positions appropriately. Petitioner has failed to show this is not true; that the absence of Mr. Mathis is somehow fatal to the decision not to interview Petitioner.

coupled with his own personality aberrations,[10] did not place him as a prime candidate for this position. The evidence further attests attempts were made to contact Petitioner and inform him of the pending interviews. However, these calls were never returned. Ultimately, the decision was made that, based upon the enumerated problems with Petitioner, it would not be necessary to interview him for this job application inasmuch as two better-rated employees had been interviewed and chosen for the positions.

Thereafter, in further evaluating Petitioner on this objective criteria, it was determined it would not be desirable for UMC to be *required* to have him mandatorily placed in the next open position. Accordingly, discussion was had with Petitioner wherein he was given the option of maintaining employment with UMC with zero hours of seniority. He declined this generous offer. He was, therefore, placed on a noncall back status with UMC.

Nothing in any of these facts establishes a claim of discriminatory intent based on race. In fact, Petitioner's own admissions regarding why he believes he was not given the position and/or terminated do not revolve around *race*; instead, they pivot around his "intimidation" of his employers and the fact that he perceives

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[10] "An employee's insubordination towards supervisors and co-workers, even if simply perceived rather than real, is justification for termination." *Palmer v. Circuit Court of Cook County, Ill.*, 905 F. Supp. 499, 504 (N.D. Ill. 1995), *aff'd*, 117 F.3d 351 (7th Cir. 1997), *cert. denied*, 118 S. Ct. 893 (1998) (internal quotes omitted).

himself – perhaps even prides himself – on being irascible. By his own admission, Petitioner has no evidence of discriminatory intent or practice by any of the named Respondents in this case.[11]

Given Respondents' strong evidentiary showing, supported by Affidavits and proper documentation in the form of a Motion for Summary Judgment, Petitioner was *obligated* to provide the Court with something more than his mere surmise. However, he was unable to answer the bell. Rather than providing direct (or even indirect) evidence of discriminatory intent, Petitioner was content to engage in vague assertions of "conspiracy" and "discrimination" without *any* evidentiary support offered in defiance of his own sworn testimony. This made his claim insufficient as a practical matter and proper for summary judgment.[12]

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[11] Indeed, as to Mr. Andrews, there is not even an allegation that anything he did was racially motivated. Instead, it is simply that UMC failed to accept his – ostensibly appropriate – recommendations. Therefore, the basis for the claims against Mr. Andrews is completely unclear.

[12] Brief comment should be made regarding Petitioner's contention about the absence of a conspiracy. The comments found in Judge Howard McKibben's Order relate to the assertion made by Petitioner that the supervisors at UMC were insecure and afraid of him. He implied they had somehow joined together to give him an unfairly low evaluation. Thus, use of the term "conspiracy" was correct because – based on the allegations of Petitioner – there was allegedly an agreement or meeting of the minds to violate his Constitutional rights. *See Woodrum v. Woodward County, Oklahoma*, 866 F.2d 1121, 1126 (9th Cir. 1989); *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983). While these allegations were only vague and conclusory (and thus insufficient to withstand a motion for summary judgment) they

III. PETITIONER HAS FAILED TO ESTABLISH ANY FACTS SUPPORTING A BREACH OF CONTRACT CLAIM OR DUE PROCESS VIOLATION

It is virtually tautological that, before a breach of contract action can be maintained, there must be in existence of an express or implied contract setting forth the responsibilities of the parties. To the extent that a written agreement exists, if the document is clear and unambiguous on its face, the plain intent of the language used dictates its interpretation. *Renshaw v. Renshaw*, 611 P.2d 1070, 1071 (Nev. 1980). The meaning and legal effect of such unambiguous contracts is a question of law properly left to the province of the Court. *See Crank v. Nevada Industrial Comm'n*, 675 P.2d 413, 415 (Nev. 1984).

In this case, there is no allegation the agreement between the Union and UMC was vague or ambiguous. Therefore, the document means what it says. In reviewing the document, Judge McKibben properly noted no breach of the contract could be found. On appeal, the Ninth Circuit sustained that position.

A state law claim of breach of employment contract is specifically inapplicable to Petitioner. As noted, he was an at-will employee. As such, he had no interest in continued employment. Before Petitioner may allege a cognizable claim to deprivation of a property right, he must show the property right arose from an outside source such as state law or entitlement brought about by *mutual*

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were nevertheless made. Hence, the Judge correctly characterized Petitioner's allegations as asserting the claim of a conspiracy and then showed that the facts simply failed to establish a valid basis for same.

understandings of the parties. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). A person "only has a constitutionally protected property interest in continued employment . . . if he has a reasonable expectation or a 'legitimate claim of entitlement' to it, rather than a mere 'unilateral expectation.' " *Brady v. Gebbie*, 859 F.2d 1543, 1547-48 (9th Cir. 1988), *cert. denied*, 489 U.S. 1100 (1989).

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from the independent source, such as state law-rules where understandings secure certain benefits and support claims of entitlement to those benefits.

Roth, 408 U.S. at 577.

An employee is generally presumed to have "at-will" status. *American Bank Stationery v. Farmer*, 799 P.2d 1100 (Nev. 1990). This presumption is not rebutted merely by the existence of an employment contract; rather, it requires the citation of additional facts indicating the employer either expressly or impliedly agreed with the employee that employment was to be for an indefinite term and may be terminated only for cause or only in accordance with established procedures or policies. *See Bally's Grand Employees' Federal Credit Union v. Wallen*, 779 P.2d 956 (Nev. 1989).

The subjective expectations of the employee for long-term employment does not alter the at-will status. *Beales v. Hillhaven, Inc.*, 825 P.2d 212 (Nev. 1992). Even the presence of an established discipline procedure, in and of itself, fails to transform an affected employee from an at-will status to one who can only be terminated for cause.

Id. In the situation of an at-will employee, the only restrictions placed on the dismissal is not one of cause but rather whether the dismissal violates public policy. *Vancheri v. GNLV Corp.*, 777 P.2d 366 (Nev. 1989); *Smith v. Cladianos*, 752 P.2d 233 (Nev. 1988); *K-Mart Corp. v. Ponsock*, 732 P.2d 1364 (Nev. 1987).

To the extent the Union agreement may have allowed Petitioner to file a grievance procedure, that was done and he was afforded a proper opportunity to air his grievance before two different hearing tribunals. In each case, after the evidence was heard, it was determined Petitioner's claims were baseless. In fact, the closest he came to victory was when Mr. Andrews made the concession that – *while there was no actual discrimination* – there could be an unfair *appearance* of discrimination and, therefore, he suggested it might have been prudent to keep Petitioner on.

In *Armstrong v. Meyers*, 964 F.2d 948 (9th Cir. 1992), the Ninth Circuit acknowledged due process was flexible and required only such procedural protections as a particular situation may demand. The Court further noted a public employer can meet its obligations to provide due process through grievance procedures established in a collective bargaining agreement. 964 F.2d at 950. In that case, the Court noted while the plaintiff's interests in keeping his job was substantial, the grievance/arbitration procedure constituted "a universally accepted method of resolving employment disputes, included in countless collective bargaining agreements." *Id.* The argument was because the Union decided not to proceed forward with the grievance/arbitration procedure, due process could

not be had. However, the Ninth Circuit strongly disagreed.

Noting "a strong public and private interest in maintaining an effective grievance/arbitration process to settle disputes between employers and employees", the Court stated:

> Allowing individual employees to decide which claims to arbitrate would undermine that process; if the individual employee could compel arbitration of his grievances regardless of its merit, the settlement machine to be provided by the contract would be substantially undermined, thus, destroying the employer's confidence in the Union's authority in returning the individual grievant to the vagaries of independent and unsystematic negotiations. Moreover, under such a rule, a significantly greater number of grievances would proceed to arbitration. This would greatly increase the cost of the grievance machinery and could so overburden the arbitration process as to prevent it from functioning successfully. Exclusive union control of the grievance process as the employees' sole representative also helps achieve one of the primary purposes of the process: a prime function of a grievance procedure is to secure uniformity in interpreting the agreement and building a 'law of the plant' with respect to matters not spelled out in the agreement.

964 F.2d at 951. Thus, a grievance procedure such as that which is before this Court adequately provided Petitioner a forum to contest the validity of his employment – or

lack thereof.[13] He, therefore, not only fails to establish a state-law claim, he cannot be heard to argue his due process rights were violated. Accordingly, dismissal is appropriate.

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[13] Although not directly raised to the District Court, one wonders whether the facts of this case sustain a claim of administrative res judicata. The concept of administrative res judicata began in Nevada with *Britton v. City of North Las Vegas*, 799 P.2d 568, 569 (Nev. 1990). In that case, a deputy city marshall sued for wrongful termination and breach of fiduciary duty. The former deputy marshall went before the North Las Vegas Civil Service Board and argued his position that he had not resigned but rather the City has violated a fiduciary duty owed to him. The Board issued a written decision which supported the City of North Las Vegas' arguments and a subsequent Writ of Mandamus was filed to the District Court. From there it proceeded to the Supreme Court and, at that point, the Court considered the binding effect of the underlying administrative decision. The Court noted the required elements for res judicata to apply were found in the Civil Service Board hearings. Specifically, the Court held three elements had to be met. Citing *Horvath v. Gladstone*, 637 P.2d 531, 533 (Nev. 1981), the Court indicated res judicata will apply to an administrative proceeding when there was a final adjudication on the merits; and the party against whom the judgment was asserted is a party in the present adjudication. *Britton*, 799 P.2d at 570.

In this case, Petitioner had a hearing before the administrative board designed to resolve the disputes which are raised in the instant Complaint. The final determination of these facts by those officers that nothing improper was done should also bar the resurrection of those claims at this time.

CONCLUSION

As if it were able to portend this litigation, another court has wisely stated:

> When a disgruntled ex-employee vents his or her spleen by launching a shotgun barrage of groundless charges against the ex-employer, the lawsuit ultimately loses. . . . But in the meantime, the justice system has been clogged to the exclusion of meritorious (or at least colorable) claims – and, even worse – the entire legitimate area of employment discrimination stands in peril of acquiring an undeserved taint.

Lines-Miller v. City of Chicago, 773 F. Supp. 1130, 1147 (N.D. Ill. 1991). Nowhere could that be truer than in the instant Petition.

For the foregoing reasons, Respondents respectfully request this Court deny Petitioner's Petition for Writ of Certiorari on the issues surrounding his ability to interview for a job and/or his employment situation.

Respectfully submitted this 24th day of July, 1998.

PETER M. ANGULO, Esq.
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301 E. Clark Ave., #1000
Las Vegas, Nevada 89101
Attorneys for Respondents

No. 97-2078
United States Supreme Court
October 1997 Term
Watson v. University Medical Center, et al.
On Petition for Writ of Certiorari

RESPONDENTS' APPENDIX

1. Plaintiff's Second Amended Complaint filed January 31, 1996 with the U.S. District Court for the District of Nevada..... RA 1

2. Deposition excerpts of Ray Watson, taken on March 14, 1996..... RA 8

3. Ray Watson's Application for Employment with University Medical Center..... RA 33

4. Affidavit of Michael Parker dated February 28, 1996.....RA 43

5. August 24, 1993 Security Services Memorandum to Brian Claypool form Michael Parker regarding Employment Selection Process.....RA 46

6. Employee Performance Evaluation for Ray Watson from January 30, 1992 to January 29, 1993.....RA 49

7. Evaluations of Per Diem Personnel – Ray Watson.....RA 54

8. Affidavit of Michael Parker dated June 11, 1996.....RA 62

9. Affidavit of John Seeno dated May 28, 1996...RA 63

10. Affidavit of Newton Yeun dated May 28, 1996.....RA 64

11. Affidavit of Clifford Ortego dated May 28, 1996.....RA 65

12. Affidavit of Kenneth Allgood dated May 28, 1996.....RA 66

13. Security Services Counseling Memos.....RA 67

14. Declaration of Francene Quick dated March 3, 1996.....RA 72

15. Affidavit of John Seeno dated February 29, 1996.....RA 73

16. Londa Watson deposition excerpts taken May 29, 1996.....RA 75

17. Carlos Henderson deposition excerpts taken March 19, 1996.....RA 80

18. Excerpts of Agreement between UMC and CCPEA.....RA 85

19. Affidavit of Kathy Silver dated March 1, 1996.....RA 92

20. Grievance Decision dated September 22, 1993.....RA 93

21. Grievance Decision dated November 9, 1993.....RA 96

RESPONDENTS APPENDIX

RAY WATSON,
608 Marcella
North Las Vegas, Nevada 89030
(702) 642-5702
Pro Per

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAY WATSON, Plaintiff, vs. **UNIVERSITY MEDICAL CENTER, MIKE PARKER, BILL ANDREWS** Defendants	**CV-S-95-00795-HDM (RLH)** **AMENDED COMPLAINT NO. 2** (Jury Demanded)

COMES NOW, the Plaintiff Ray Watson, Pro Per, and alleges as follows:

FIRST CAUSE OF ACTION

(Race Discrimination)

1.

This is a civil rights action. Jurisdiction and venue are based upon 42 U.S.C. § 1983 and Title VII 2000e.

2.

At all times relevant herein, the plaintiff, Ray Watson, a black male, a resident of Clark County, was employed at the UNIVERSITY MEDICAL CENTER and was so employed since January 29, 1992. The plaintiff's title was SECURITY OFFICER. The plaintiff is 35 years of age.

3.

At all times relevant herein, the defendant, MIKE PARKER, a white male, was employed by the UNIVERSITY MEDICAL CENTER. The Defendant title was DIRECTOR OF SECURITY.

4.

At all times relevant herein, the defendant, BILL ANDREWS, a white male, was employed by the UNIVERSITY MEDICAL CENTER. The Defendant title was INTERNAL AUDITOR.

5.

At all times relevant herein, the Defendant, the UNIVERSITY MEDICAL CENTER (hereinafter referred to as "UMC") was and is a political subdivision of the state of Nevada.

6.

That the Defendants were at all relevant times, acting under the color of a state statue, [sic] ordinance, regulation, custom or usage and caused the Plaintiff to be

subjected to the deprivation of the privileges and immunities secured by the constitution and laws.

7.

That during his employment at UMC, plaintiff was intentionally discriminated against because of his race, Black, by defendants Michael Parker, Bill Andrews and the University Medical Center. Specifically, Plaintiff was a Per diem Security Officer and was denied a [sic] interview for two (2) available full time security positions.

8.

There were a total of *eight applicants* (8) recommended for interviews by the personnel Department for those openings. Those per diem employees recommended, including plaintiff, were sent to Defendant Parker for interviews. Defendant Mike Parker selected and interviewed the seven white applicants and refused to interview plaintiff, a black applicant.

9.

That in his decision on November 9, 1993, UMC Hearing Officer Bill Andrews reinstated Plaintiff and recommended that he be interviewed for the next available full time position. Nearly two years later, plaintiff has never been given his job back.

10.

That as a result of aforesaid acts, Plaintiff has suffered emotional, mental and economic hardship. Throughout the termination, Defendants Michael Parker, Bill Andrews and UMC, discriminated against plaintiff and violated the equal protection clause of the United States Constitution.

SECOND CAUSE OF ACTION

Pendant Claim

(Breach of Covenant of Good Faith and Fair Dealing)

11.

Plaintiff repleads and realleges the allegations contained in paragraphs 1 through 9 above and though fully set forth herein.

12.

That Hearing Officer Bill Andrews is the duly appointed, authorized and promulgated agent for the principle, University Medical Center. Hearing Officer Andrews gave Plaintiff a hearing on November 4, 1993. He rendered a written decision ordering UMC to *reinstate Ray Watson*, and instructing UMC that Plaintiff be given an interview on the next full-time opening in the department.

13.

That Plaintiff has waited an inordinate and unreasonable amount of time for compliance with the Hearing officers written decision, to no avail.

14.

That neither UMC, nor Mike Parker has not complied with the authorized decision and failed to reinstate plaintiff.

15.

That as a result of aforesaid acts, Plaintiff has suffered emotional, mental and economic hardship. Throughout the termination, occurring on August 22, 1993, Defendants Michael Parker and UMC, have refused specific performance on the written decision of their own agent, Hearing officer Bill Andrews.

THIRD CAUSE OF ACTION

(injunctive relief)

Plaintiff repleads and alleges the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

16.

Plaintiff asks the court to void Defendants termination and reinstate Plaintiff to a full-time position as a Security Officer, as he is entitled but for Defendants wrongful acts.

17.

Plaintiff request the court's injunctive relief to prevent retaliatory or wrongful acts by Defendant in response to this action.

18.

Plaintiff has been issued a Right-to-Sue letter from the Equal Opportunity Commission.

Wherefore, Plaintiff prays for the following relief:

1. Injunctive relief as set forth above with full back pay and benefits if Plaintiff is not reinstated immediately;

2. Compensatory damages in the amount of $200,000;

3. Plaintiff's costs of suit; and

4. Punitive damages in the amount of $200,000;

5. Such other and further relief as the court may wish to entertain.

DATED this 22 day of December, 1995.

/s/ Ray Watson
Ray Watson, Pro Per
608 Marcella
North Las Vegas, Nevada 89030

Certificate of Mailing

The undersigned hereby certifies that a true and correct copy of foregoing Plaintiff's **Motion to Amend Complaint No. 1,** was mailed on this Friday [sic] 22, 1995, postage-paid envelope to the following:

Attorney for the Defendants
Bryan Lewis, Esq.
301 East Clark Avenue,
Suite 1000
Las Vegas, Nevada 89101

Patricia A. Glasper

/s/ Patricia Glasper

[p. 1] UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

RAY WATSON, Plaintiff, vs. UNIVERSITY MEDICAL CENTER, MIKE PARKER, BILL ANDREWS, Defendants.	)	CASE NO. CV-S-95-795-HDM(RLH)

DEPOSITION OF RAY WATSON

Taken on MARCH 14, 1996

1:50 P.M.

At 301 EAST CLARK AVENUE, #1000

LAS VEGAS, NEVADA

Reported by: Terri MacTaggart, CCR 156, CP, CM

* * *

[p. 14] Q. You know Mike Parker that's a defendant in this lawsuit?

A. Yes, I do.

Q. How long have you known Mike Parker?

A. Oh, from the time I started to work.

Q. At UMC?

A. Yes.

Q. Did you know him any other way than your work at UMC?

A. No.

Q. At the time you were working at UMC, weren't you also working at the Water District?

A. That's correct. That's correct.

Q. And what was your job at the Water District?

A. I was a water enforcement officer.

Q. How long did you work for the Water District?

A. I can't remember.

Q. What was the reason that you stopped working for the Water District?

A. I refuse to answer that.

MR. LEWIS: Certify that one.

BY MR. LEWIS:

Q. Your position with UMC was a per diem employee, wasn't it?

A. That's correct.

[p. 15] Q. What's your understanding of what a per diem employee at UMC was?

A. Are you asking me a question?

Q. Yes. What's your understanding of what a per diem employee for UMC is?

A. I'm not here to give narrative answers, Counsel. You ask me the question, I answer the question, not to

elaborate on what my understanding is. You ask me a question, I answer it, but I'm not going to give you my understanding of what a per diem employee is.

Q. What did you do for UMC?

A. I was a security officer.

Q. You were a per diem security officer?

A. Yes.

Q. Do you understand there's a difference between a per diem employee and a full-time employee?

A. Yes, I do.

Q. As a per diem employee, security officer, for UMC, did you have regular hours that you worked?

A. No.

Q. How often would you go into work for UMC?

A. It depends. It depended when they want to fuck me around. So, it varies. I was on-call.

Q. All right. You didn't have any regular hours?

A. No set hours.

* * *

[p. 17] Q. Did you ever ask Allgood why you weren't getting more hours at UMC?

A. I don't recall asking him that.

Q. Do you recall him ever counseling you about female patients or employees complaining that you were flirting with them at UMC?

A. I don't recall that.

Q. Do you recall him counseling you that you were tardy showing up for work at UMC?

A. I don't recall that.

Q. Do you recall him counseling you that you didn't always get your paper work done per the procedure at UMC?

A. At this time I don't recall that.

Q. Who's Louis – and I'm going to mess up his last name, I'm sorry – Chachere that you gave me the motion for a protective order on? Who is he?

A. I refuse to answer that.

MR. LEWIS: Okay. Certify that.

BY MR. LEWIS:

Q. Did you ever work with Larry Mathis at UMC?

A. Yes, I did.

Q. How often would you work with him?

A. It varied.

Q. How about Ed Yesko, Y E S K O?

A. Yes, I did.

[p. 18] Q. How often would you work with him?

A. It varied.

Q. How about John Seeno, S E E N O?

A. Yes, I did.

Q. Was he one of your supervisors?

A. Yes.

Q. How about Cliff Ortego, O R T E G O? Did you work with him?

A. Yes.

Q. Was he one of your supervisors?

A. Yes.

Q. And Newton Yuen, Y U E N, do you remember working with him?

A. Yes.

Q. Do you remember how often you would work with him?

A. It varies. I was on-call, you know.

Q. But at sometime or another you worked with all of those people? Did you work with Allgood also at different times?

A. Yes, I did.

Q. Did you ever have any problems working with any of those fellows that I just read off their names?

A. All of them are assholes.

Q. They're all assholes?

[p. 19] A. As far as I'm concerned. That's my constitutional protected opinion.

Q. What gives you that opinion?

A. Let's move on, Counsel.

Q. You're refusing to answer that question?

A. Yes.

Q. Did you ever work with Lester Rowe?

A. Yes, I did.

Q. How often?

A. It varied.

Q. Do you know what his position at UMC was?

A. I think he was a security officer, per diem.

Q. Do you know how much experience he had?

A. He had less per diem experience at UMC than I.

Q. Did he have any more experience in being a security officer than you did?

A. I can't answer that because I don't know.

Q. You don't know how much experience he had at being a security officer?

A. The only thing I can testify to, Counsel, is that I knew I had more per diem security experience than he at UMC.

Q. Other than your security officer experience at UMC, had you had any other jobs as a security officer before that time?

[p. 20] A. Yes, I did, but I can't remember at this time when and what.

Q. Do you know what kind of security – per diem security officer Lester Rowe was at UMC? Was he good, bad? Was he an asshole?

A. Sometimes, yes.

Q. Did you get along with him though?

A. Yes.

Q. How about Dave Vernon, did you work with him?

A. Yes. We were all assholes, including myself.

Q. Did you get along with Dave Vernon?

A. Yes, I did.

Q. Do you know what kind of experience he had as a security officer other than at UMC?

A. No.

Q. Do you know if you had more per diem experience as a security officer at UMC than Dave Vernon did?

A. Yes, I did.

Q. Do you know any discipline that Dave Vernon had while working at UMC?

A. I can't testify to that. I don't know.

Q. How about Mark Ballard? Did you work with him at UMC?

A. Yes, I did.

Q. Do you know what his position at UMC was?

* * *

[p. 25] A. He was a per diem security officer.

Q. Do you know if he had any disciplinary action taken against him?

A. I don't know.

Q. Do you know what kind of experience he had other than working at UMC as a security person?

A. No.

Q. Now there came a time, didn't there, when you applied for a full-time position at UMC?

A. That's correct.

Q. And that gives rise to this lawsuit?

A. That's correct.

Q. Do you remember when you applied for that position?

A. Not at this time.

Q. Do you know who else applied for the position? In fact, there were two of them, weren't there? There were two full-time positions that were open?

A. That's correct.

Q. Do you know who applied for those positions?

A. Yes. I did.

Q. Okay. Who? Who was it?

A. Don Hale, David Vernon, Mark Ballard – Can you strike that?

Q. You can just say, "Strike that." It's not going [p. 26] to be stricken.

A. I'm not a – Okay. Strike that for me.

I can only testify who applied for it within our department –

Q. Okay.

A. – who was eligible for the full-time position within our department.

Q. Okay.

A. And then the names are as follows. Don Hale, Mark Ballard, Brian Dias, David Vernon, John Villano, Ray Watson. Who am I missing, Counsel?

Q. You want other names? Is that all you remember?

A. Yes, the names.

Q. Well, no. I want to know who you remember.

A. How many do you have?

Q. Six.

A. Including myself?

Q. Including you.

A. Lee Cain, Mr. Brenn.

Q. Warren Brenn?

A. Warren. That should be eight total.

Q. Those are the ones you know of?

A. Those are the ones who was eligible for the position within the department.

Q. What did you have to do to be eligible for the [p. 27] position?

A. Be a per diem security officer within the department.

Q. Is that it?

A. And meet the minimum requirements.

Q. What were the minimum requirements?

A. I can't remember at this time.

Q. Do you know who got these two full-time positions?

A. From my understanding, as I recall, David Brenn and Brian Dias.

Q. Warren Brenn and Brian Dias?

A. Yes, Warren.

Q. Do you know what their qualifications were for the jobs?

A. I can't remember at this time. I don't know what Dias' qualifications was.

Q. How about Warren Brenn's?

A. I can't recall at this time.

Q. Do you know if you were better qualified for those positions than Brian Dias or Warren Brenn?

A. Yes.

Q. Why were you better qualified?

A. I think my evaluation speaks for itself.

Q. What evaluation?

[p. 28] A. My annual evaluation.

Q. Your annual evaluation?

A. Yes.

Q. Do you understand that each of the applicants for these two full-time positions were evaluated by supervisors in the security department at UMC?

A. No.

Q. Well, I've given you the documents that show you the evaluations. You don't remember seeing those?

A. I don't recall seeing any dates. I don't recall seeing any names, who did the evaluation. As far as I'm concerned, all I see is a document with a bunch of numbers on it.

Q. Okay. But you have those documents?

A. Yes, I have those documents. I don't know who did the evaluation. You could have done them. No one signed them.

Q. And you don't know when they were done?

A. I don't know when they were done.

Q. Do you know why they were done?

A. I've been told why they were done.

Q. Okay. Why is that? What were you told why they were done?

A. I can't remember.

Q. Well, if I told you they were done to give an [p. 29] evaluation for the people that had – that applied for these two full-time positions, would that refresh your memory?

A. Maybe.

Q. Well, does it? I just told you.

A. Okay.

Q. Do you have any reason to believe that they weren't done for that reason?

A. Yes.

Q. Okay. Why?

A. To cover their ass.

Q. To cover whose ass?

A. Parker's.

Q. Have you – Why do you think that?

A. Well, given the fact that I was never present, I never had an opportunity to contest these evaluations, the fact that nobody signed them. They're just out there.

Q. Has anybody told you those evaluations were made up to cover anybody's butt?

A. No.

Q. Do you have any evidence from anybody that those evaluations were not done for the purposes of evaluating people for those two full-time positions?

A. No.

Q. They just looked fishy to you? Is that right?

[p. 30] A. I'm trying to come up with a word other than fishy.

Q. They looked unethical to you?

A. Unethical. Fishy sounds fishy. Unethical.

Q. Do you know if your evaluation was done any differently than anyone else's evaluation?

A. No.

Q. No?

A. I would assume it was done the same.

Q. I can't hear you, Ray.

A. I'm sorry. I would assume that it was done the same.

Q. Of the eight people you mentioned to me that you knew of that had applied for these full-time positions, were you the only Black man?

A. Yes.

Q. Do you know if there were any other Black men besides you that applied for the full-time position?

A. No.

Q. You don't know? Or no, there wasn't?

A. There wasn't – Well, no. I was the only Black.

Q. Why do you think you were discriminated against in trying to get one of these two full-time positions?

A. Can't you tell?

Q. No.

[p. 31] A. I'm an asshole.

Q. You want to just stick with that answer? Or do you want to give me another one?

A. Because they – they are a bunch of maggots. And by giving me that full-time position, I would expose their weaknesses as managers, supervisors, lieutenants, the whole nine yards.

Q. When you say "they", can you tell me names?

A. Meaning Mike Parker, meaning Cliff Ortego, and the whole nine yards.

Q. Well, other than Mike and Cliff, who else are we talking about?

A. Seeno, Allgood, because they're very ineffective managers of people.

(Outside interruption.)

MR. LEWIS: Just a minute. We'll go off the record.

(Brief recess was commenced at 2:40 p.m. and concluded at 2:46 p.m.) (Requested portion of the record was read back by the reporter.)

BY MR. LEWIS:

Q. Did Mike Parker – Well, let's don't start with him. Did Ken Allgood ever do anything to you that leads

you to believe that he was prejudiced against Black people?

* * *

[p. 32] (Defendant's Exhibit B was marked for identification.)

BY MR. LEWIS:

Q. Here, Ray. Take a look at these four pages that are Exhibit B (handing). Then tell me if you recognize what those are.

A. Yes, I do.

Q. Okay. What are they?

A. Letters.

Q. You see the one dated February 21st, 1993? Do you see that one? Do you see that one?

A. Yes.

Q. That's for divulging privileged information?

A. Yes.

Q. And you recall being counseled –

A. Yes.

Q. – for doing that? And was that a violation of UMC policy, what you did?

A. I don't recall seeing a policy, but –

Q. But you were counseled for that?

A. Yes.

Q. Is that your signature on there?

A. Yes, it is.

Q. The next one is May 22nd, 1993.

A. Yes.

[p. 34] Q. You were given a verbal counseling again?

A. Yes.

Q. Okay. And that was for preparing a Visitor Log?

A. Yes.

Q. And you signed that one, also?

A. Yes. I signed it with objection.

Q. What were your objections?

A. I can't remember at this time, but each and every one of these, for your information, I signed with objections.

Q. Is there anything on these documents that would tell us you objected to them?

A. No, I guess it would be hearsay, wouldn't it?

Q. Did you file a grievance over any of these?

A. No. I did not.

Q. And the next one I've got is June 5th, 1993. You were given verbal counseling about taking the property of a patient and logging it in. Do you remember that?

A. Yes, I did. Yes, I do.

Q. Did you do what it says on there?

A. I can't recall the circumstance around this incident.

Q. Okay. How about the last one dated June 8th, 1993, incorrect processing of patient's personal property?

A. Uh-huh.

[p. 35] Q. Was that one of your jobs as a per diem security officer?

A. Yes, it was. Yes.

Q. Do you recall being counseled for anything else in 1993 other than these four pages that we have as Exhibit B?

A. No.

Q. You weren't counseled for tardiness?

A. I don't recall at this time, no.

MR. LEWIS: Mark this as C (handing).

(Defendant's Exhibit C was marked for identification.)

BY MR. LEWIS:

Q. Do you recognize this document we marked as Exhibit C (handing)?

A. I sure do.

Q. What is that?

A. This is the agreement between the University Medical Center and the CC Public Employees Association.

Q. Do you know how this agreement applies to per diem employees?

A. Yes, I do.

Q. Okay. And how does it apply?

A. Be more specific.

Q. Well, what's it say with regard to per diem [p. 36] employees?

A. The document speaks for itself, Counsel. Be more specific. What do you want to know? Ask me – I'm not here to give a narrative answer.

Q. I want to know what it says. Are you familiar with this contract?

A. Yes, I am.

Q. What were the terms of your employment as a per diem security officer for UMC?

A. I was an at-will employee, Counsel.

Q. So, they could let you go at any time they wanted?

A. At any time, for any reason or no reason at all.

Q. And that wasn't something that could be grieved to the Union, right? That was reserved to management, UMC, in this contract, wasn't it?

A. No, I disagree, Counsel. There are some clauses in here that would – that can be grieved to the Union.

Q. For letting you go as a per diem employee?

A. Discrimination. It's in there, Counsel. You can find it for me.

Q. Why do you think you were let go from UMC?

A. Didn't we answer that?

Q. I don't think you did. But I mean, you want to object that it's asked and answered, you can, but then you [p. 37] need to answer.

A. I object. I already answered why.

Q. But then you need to answer again for the record.

A. I guess this would be part two of my part one. I think I intimidate them.

Q. They let you go because you intimidate them?

A. I think I intimidate them.

Q. Is that it?

A. Yes, I think I intim – I really believe I intimidate them. After all, who would want to employ someone who their mere presence intimidates them?

Q. You think UMC violated this agreement that's Exhibit C when you didn't get one of the two full-time positions as a security officer?

A. Yes, I do, Counsel.

Q. Okay. What parts of that do you think they violated?

A. Article 11, Section 3.

Q. Anything else?

A. Yes. Help me out, Counsel. Help me find the managers' rights.

Q. Look in the front.

A. Okay. I should have known that. That would be Article 5. Counsel, I don't have my glasses on. It's kind of hard for me to read this. At this time, I can't seem to [p. 38] find it in here, but it's there.

Q. Do you claim anything other than this Exhibit C gave you a contract of employment at UMC?

A. I can't recall where it was in here. I can't see. I don't have my glasses. Part of the contract states that a manager cannot re-assign or transfer any employee for the person's discipline.

Q. You aren't claiming you weren't an at-will employee though, right?

A. No.

Q. Right?

A. I agree. I was an at-will employee under certain conditions.

Q. You just claimed they discriminated against you because you intimidated them, is that right?

A. That's my opinion, yes.

Q. And that's it?

A. And a violation of this contract clause.

Q. But they didn't treat you any different than anyone else?

A. Yes, they did treat me different.

Q. How did they treat you different?

A. Now, we're getting down to it. I was treated different. Number one, I had more security experience at UMC than those other per diem employees who applied. [p. 39] Number two, my evaluation was satisfactory. Number three, they were all given an interview. I was denied an interview. That's disparate treatment, Counsel.

My argument is not whether or not I should have gotten the full-time job. My argument is simply you should have given me the same opportunity to compete for that job as you gave the other seven white employees, for the record.

Q. Do you know that all other – all the other seven that you gave me the names of were interviewed?

A. They were all interviewed, yes. That's all – That's been admitted to. I was the only African-American who applied.

Q. Were you called for an interview?

A. Not to my knowledge, no.

Q. Was your mother called and told that you should come in for an interview?

A. My mother has been dead since '82, Counsel.

Q. Was your wife called?

A. No. So, the argument, Counsel, is not whether I should have gotten a job. Given the fact that I had more per diem experience than all of them.

Q. You don't have any problem with not getting the full-time job, you're just upset because you didn't get an interview. Is that what I'm hearing from you?

* * *

[p. 42] assholes had to come up with some way to get rid of me.

If you will look at those letters, distinguished Counsel, they had ample opportunity to get rid of me prior to that day. If I was that big of a fuck-up, why would you keep me around for two years?

Q. You think they could have fired you before that?

A. Of course. You know that. I'm per diem. I was at-will. And if I was that big of a fuck-up, get rid of me a long time ago. But you wait until you're close to 2080 hours and say, "Oh, by the way, we've got to let you go." Explain that to me, Counsel.

I was let go on, what, September what, '90 something? My last write-up was 6 of '93. Am I mistaken? So, between 6 of '93 nothing happened in that timeframe to justify them letting me go.

Q. But they would have been justified in letting you go before that, is that what you're telling me?

A. No, I'm not saying that. My point is, Counsel, is that they could have let me go at any time. So, I believe when I said other than – One other motive which I forgot to mention is that I was close to 2080 hours. As you can see, my last write-up was June, yes, June of '93. They let me go in September. So, that's the timeframe of three months.

Q. Was there anything that required UMC to give you

* * *

[p. 45] Q. So, you were let go before your probationary period expired?

A. Yes, because I couldn't sleep at night which, in turn, I couldn't go to work and function properly, the stress, trying to figure out how I was going to fight these assholes in court.

Q. Are you getting along better now?

A. Of course.

Q. Are you able to go to work everyday now?

A. Yes.

Q. Sleep at night now?

A. No.

Q. Most of the time?

A. Very seldom.

Q. Well, you look pretty fresh today, Ray. So, did you sleep last night?

A. No. How could I sleep not knowing what you're going to hit me with?

Q. Do you know if there's any other Black security officers working for UMC, full-time or per diem?

A. Yes, I do. Yes.

Q. There are?

A. Yes.

MR. LEWIS: What are we up to?

COURT REPORTER: D.

* * *

[p. 53] Q. Well, is there anything in the Union contract that says just because you've been there longer than anybody else you're entitled to a job? Am I missing something? I didn't see anything in there that says you're entitled to preference because you've got more hours than anybody else. Did I miss something?

A. That's not the issue, Counsel.

Q. I'm just asking you the question.

A. That there's nothing that says that?

Q. Yes. Is there something that says that you get preference because you've got more hours as a security per diem officer than some other per diem officer?

A. I think there's something in the Constitution that says there's equal protection under the laws, that all employees will be treated equal under like or similar circumstances.

Q. But there's nothing that says because you've got more hours than anybody else you should get the job?

A. No.

Q. It should be based on your abilities?

A. Yes.

Q. Well, are there any policies that you know of other than the Union contract that would say you're

entitled to preference because you have more hours than somebody else?

[p. 54] A. I would think that the policy I think it's 102 or 101, would more or less solidify my argument that says it is a policy of UMC to treat employees equally when it comes to employment and promotion.

Q. Okay, but that's not my question. My question is, is there some other written policy that says because you have more experience and hours working as a per diem security officer you get preference because you have that extra hours?

A. No policy.

Q. So, just because you had more hours than somebody else doesn't mean you should get the job, is that right?

A. I agree.

Q. Do you know of anyone else, any other per diem security officers, that were discriminated against by Mike Parker because of their race?

A. Again, I can only testify to hearsay, yes.

Q. Who is it that you know of that was discriminated against by –

A. A.J. Jackson.

Q. A.J. Jackson? When did he work for UMC?

A. He works there now.

Q. Is he a per diem security officer?

A. Oh, no. I'm sorry. He's not per diem. He's permanent.

DEFENDANT'S EXHIBIT NO. 1

UNIVERSITY MEDICAL CENTER
OF SOUTHERN NEVADA
1800 W Charleston Blvd. (702) 383-2230
Las Vegas, Nevada

AN EQUAL OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER (Including the handicapped)

APPLICATION FOR EMPLOYMENT

PLEASE TYPE OR PRINT IN BLACK INK

Resumes or additional sheets may be added to the back of the application, but *cannot* be substituted for the completion of this form.

Date: 10-5-91

WATSON	RAY	A	530-64-3094
Name (Last)	(First)	(MI)	Social Security Number

608 MARCELLA N. LAS VEGAS NEVADA 89030
Mailing Address (Number-Street) (City) (State) (Zip)

(702) 642-5702
Area Home Telephone Number

(702) 649-5612
Area Work or Other Telephone Number

Referred By: (JACK STALEY) LAS VEGAS VALLEY WATER DISTRICT

Have You Ever Been Employed By UMC? Yes [ ] No [✓]

Under What Name: _____ Dates: _____

Position: _____ Department: _____

Do You Have Relatives Working at UMC? Yes [ ] No [✓]

List All Relatives at UMC.

Name: _____ Department: _____

Relationship: _____

Are you over 18 years of age? YES [✓] NO [ ]

MARK ALL THE WORKING STATUSES YOU WILL ACCEPT:

Full-Time	[✓]	Days	[✓]
Part-Time	[ ]	Evening	[✓]
Temporary	[ ]	Nights	[ ]
Per-Diem	[✓]	Weekends	[✓]

Part-Time/Per-Diem/Temporary employment may not lead to Full-Time employment.

I am expressing an interest in the following positions:

1. SECURITY OFFICER 2. _____

3. _____

Professional/Technical Applicant – License/Registration/Certification

Type: N/A #: _____

State: _____ Expiration Date: _____

EDUCATION

School Name/ Location	Mo/ Yr	Mo/ Yr	Major Subjects
High School RANCHO (LVN) Did You Graduate? YES Degree of Certificates Granted			
College IDAHO STATE, UNI	9/77	5/82	Security Admin/ Education
Did you Graduate? YES Degree or Certificates Granted BA			
Professional			
Technical			
Trades			

SKILLS CHECK LIST (COMPLETE IF APPLICABLE TO POSITION(S) APPLIED FOR)

SPEED	SPEED	OPERATE
Typing 35	Speed Writing __	Calculator ✓
Word Processor __	Shorthand __	Billing __

IDENTIFY ANY OTHER(S) _____

Computer – Make IBM ____ – Languages _____

CODE of FEDERAL REGULATIONS – Title 21

The Code of Federal Regulations, Title 21, as a matter of business necessity which is essential to overall controlled

substances security, requires hospital screen prospective employees for criminal convictions or pending criminal charges. Please read and respond carefully to the following:

INFORMATION FURNISHED OR RECOVERED AS A RESULT OF ANY OF THE FOLLOWING WILL NOT NECESSARILY PRECLUDE EMPLOYMENT BUT WILL BE CONSIDERED AS A PART OF AN OVERALL EVALUATION OF YOUR QUALIFICATIONS. HOWEVER, ANY FALSE INFORMATION OR OMISSION OF INFORMATION WILL JEOPARDIZE YOUR POSITION WITH RESPECT TO EMPLOYMENT.

1. Within the past five years, have you been convicted of a felony, or within the past two years, of any misdemeanor or are you presently formally charged with committing a criminal offense? (Do not include any traffic violations, juvenile offenses or military convictions, except by general court-martial.)

   Yes [✓] No [ ]

   If yes, furnish details of conviction, offense, location, date and sentence:

   Conviction: _____

   Offense: Ebellezment [sic]

   Date: 5-30-89 Sentence: PROBATION

2. In the past three years, have you ever knowingly used any narcotics, amphetamines or barbiturates, other than prescribed to you by a physician? Yes [ ] No [✓]

If the answer is yes, furnish details: _____

_____

_____

WORK EXPERIENCE

It is necessary you provide a complete and accurate record of past and present employment. List the last or present employer first. *List the last five employers or no less than the last ten years of employment.* Account for any periods of unemployment between employers. Attach additional sheet(s) of paper if necessary in the completion of information required.

[✓] I do NOT wish my present employer to be contacted.

DATES

1. From 4/15/90 To CURRENT

Employer Name & Address
LAS VEGAS VALLEY WATER DIST
3700 W CHARLESTON

Position SECURITY OFFICER

Monthly Salary 1200

Reason for Leaving CURRENT

Type of business: UTILITY BUSINESS Last Supervisor's Name Ron Woolridge/Jack

Your Name When Employed: RAY WATSON

Describe Your Duties: CONTROL CUSTOMERS, INVESTIGATE SUSPECTED AND/OR REPORTED CRIMINAL ACTIVITIES EFFECTING THE DISTRICT POLICIES WITH WRITTEN REPORT, ASSURE ALL EXTERIOR DOORS, WINDOWS AND GATES ARE SECURED. PERFORM MONTHLY INSPECTION OF FIRE EXTINGUISHERS

DATES

2. From 3/85 To 3/90

Employer Name & Address
Adaksco Export/Import
1701 W. CHARLESTON Position CUSTOMER REP.

Monthly Salary 1400

Reason for Leaving SOLD BUSINESS

Type of business: EXPORTATION Last Supervisor's Name Tim Illegible

Your Name When Employed: RAY WATSON

Describe Your Duties: SERVICE AND SOLD PRODUCE TO LOCAL BUSINESSES

DATES

3. From ~~3/85~~ To 3/85

Employer Name & Address
FARMERS INSURANCE
PHOENIX ARIZONA Position AGENT

Monthly Salary COMM.

Reason for Leaving RESIGN

Type of business: INSURANCE Last Supervisor's Name None

Your Name When Employed: RAY WATSON

Describe Your Duties: SERVICE POLICYHOLDERS ACCIDENT REPORT WRITING, CLAIMS HANDLING

ECT.

DATES

4. From To
9/82 6/83

Employer Name & Address
WELLS FARGO
3306 WEST SPRING MOUNTAIN
Position SECURITY OFFICIAL

Monthly Salary 700

Reason for Leaving PART-TIME

Type of business: SECURITY Last Supervisor's Name Unknown

Your Name When Employed: RAY WATSON

Describe Your Duties: MONITOR AND PROTECT BUSINESS ASSETS AND PREMISE, CONTROL PARKING AND SET CONSTRUCTION) BARRICADE FOR TRAFFIC

DATES

5. From To

Employer Name & Address

Position

Monthly Salary

Reason for Leaving

Type of business: _____ Last Supervisor's Name

_____

Your Name When Employed: _____

Describe Your Duties: _____

_____

_____

_____

FOREIGN LANGUAGE: Please note your knowledge of any language(s) other than standard English and indicate your level of competency.

Language
SPANISH

Reading		
Fluent	Good	Fair
		✓

Speaking		
Fluent	Good	Fair
		✓

Understanding		
Fluent	Good	Fair
		✓

Writing		
Fluent	Good	Fair
		✓

_____

_____

AGREEMENT

(Read Carefully Before Signing)

I certify that the information provided UMC is true and correct without consequential omissions of any kind. I understand misrepresentation or omission of facts may be cause for rejection of my application or dismissal from employment. I understand that permanent employment with the Medical Center is subject to the satisfactory completion of the probationary period. I hereby authorize the Medical Center to verify or confirm all responses to the information I have voluntarily provided the Medical Center and authorize all previous employers, persons, schools or others referred to in this form to release the factual information requested by the Medical Center. I hereby release all parties from all liability or any damage which might occur in issuing the information. I understand this information will be used only in the evaluation of my application for employment with University Medical Center of Southern Nevada.

I also understand that consideration for employment will be given only if this form is complete; successful completion of the pre-placement physician examination as scheduled; satisfactory former employment and other job related background responses are received; and qualify for the specific positions/s for which I apply. I understand that I will be required to abide by the Medical Center rules and regulations as defined by the UMC Personnel Policies & Procedures and the department to which I may be assigned.

Date: 10/5/91 Applicant's Signature: Ray Watson

In case of accident or personal emergency, the Medical Center is authorized to notify the following individual:

Name: WILLIE WATSON Relationship: BROTHER
Telephone #: (702) 643-0241

Address: 4083 FERN LEAF City: NORTH LAS VEGAS State: NEV

AFFIDAVIT OF MICHAEL PARKER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

MICHAEL PARKER, being first duly sworn deposes and states as follows:

1. That your Affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your Affiant makes this Affidavit in support of Defendants' Motion for Summary Judgment.

3. That your Affiant is Director of Security Services at University Medical Center.

4. That as of September 7, 1993, there were twenty-five full-time security officers in the Security Services Department comprising fourteen Whites, six Blacks, three Hispanics, and two Pacific Islanders. Since February 24, 1992, Affiant has been in a position to hire into the department, and nine full-time officers have been hired including four Whites, three Blacks, one Hispanic, and one Pacific Islander.

5. That Affiant's decision for not hiring Mr. Watson as a full-time employee was based on the following:

A. When the twelve per diem security officers were evaluated by the Lieutenants and lead security officers, Mr. Watson ranked at the bottom; number twelve out of twelve. He received 36.5 points with the next lowest officer, number eleven, receiving 42.2 points. The

racial/ethnic mix of the officers performing the evaluations was: two Caucasians, two African Americans, one Oriental, and one Hispanic.

B. Mr. Watson was disciplined ten times:

1. 2/8/93: No call – no show.

2. 2/21/93: Divulged patient's privileged information.

3. 2/23/93: Tardy.

4. 4/28/93: Counselled by Affiant concerning his work habits and the fact that the supervisors were not happy with his output.

5. 5/22/93: Procedure violation.

6. 5/23/93: Tardy.

7. 5/24/93: Tardy.

8. 6/5/93: Procedure violation.

9. 6/8/93: Procedure violation.

10. 6/20/93: Tardy.

B. That Article 5, Section 1(a) of the Agreement between University Medical Center and CC Public Employees Association, gives the manager the authority to select from the pool of applicants those persons who he/she feels are qualified applicants.

C. That Article 11, Section 1 of the Agreement between University Medical Center and CC Public Employees Association, states . . . "a Per Diem Employees's eligibility for scheduling may be discontinued at any time at the sole discretion of UMC and

without recourse to the grievance and. . . . arbitration procedures or discipline appeal pr[illegible]ures of this Agreement."

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Michael Parker
MICHAEL PARKER

SUBSCRIBED AND SWORN to before me
this 28th day of February, 1996.

/s/ Linda A. Lewis
NOTARY PUBLIC In and For Said
County and State

RA 46

MEMORANDUM
SECURITY SERVICES

TO: Blain Claypool, Associate Administrator

FROM: Michael Parker, Director of Security Services

SUBJ: Employee Selection Process

DATE: August 24, 1993

In reviewing the applicants for the full time employee position I decided that it would be best to get input from the Lieutenants and lead security officers. I like to include them in the decision making progress whenever I can so that we build a team relationship. I explain to them that I take their input with high regards but that the final decision is my responsibility. Those present for this process were:

Lt Ken Allgood	Lt John Seeno	Lt Cliff Ortego
S/O Larry Mathis	S/O Ed Yesko	S/O Newton Yuen

I provided a form to each of these persons, which I made using the UMC evaluation form as a format. They were seated and told not to discuss their feelings or judgment with each other. I instructed them to fill out the forms using a scale of 1 to 10 (10 being best) in each of the categories listed. They were also instructed that if they felt they could not honestly grade an individual for any reason that they should leave the form blank.

When I collected the forms I simply added the scores and then averaged those figures. I averaged so that if one officer was graded by six persons and another officer was graded by three it would be fairly analyzed.

The twelve per diem officers were graded in the following order:

1)	Lester Rowe	(63)
2)	Brian Dias	(60)
3)	David Vernon	(56.4)
4)	Warren Brenn	(55.6)
5)	Mark Ballard	(55.5)
6)	Wayne Smith	(51.6)
7)	John Villano	(50.6)
8)	Chris Bubel	(49.1)
9)	Lee Cain	(47)
10)	Don Hale	(44.75)
11)	Calvin Wallace	(42.2)
12)	Ray Watson	(36.5)

The officers graded as number two (2) Mr. Brian Dias (a Pacific Islander), and number four (4) Mr. Warren Brenn (a Caucasian), were selected for the full time positions.

Reason for not hiring Mr. Ray Watson

Discipline:

8 Feb 93	No Call – No Show
21 Feb 93	Divulged Patients Privileged Information
23 Feb 93	Tardy
28 Apr 93	Counselled by myself concerning his work habits and the fact that the supervisors were not happy with his output.

22 May 93 Procedure Violation

23 May 93 Tardy

24 May 93 Tardy

5 Jun 93 Procedure Violation

8 Jun 93 Procedure Violation

20 Jun 93 Tardy

Supervisors Grading of Applicants:

Mr. Watson was rated as number twelve out of twelve security officer applicants. (See Example)

This rating was conducted by the shift supervisors as well as the lead officers. This body was made up of the following racial/ethnic mix; 2 caucasion, 2 African Americans, 1 Oriental, and 1 Hispanic.

Contract between CCPEA and UMC.

Article 5 Section 1 – a. gives the manager the authority to select from the pool of applicants those persons who he/she feels are qualified applicants.

Article 11 Section 1. A Per Diem Employee eligibility for scheduling may be discontinued at any time at the sole discretion of UMC and without recourse to the grievance and arbitration procedures or discipline appeal procedures of the agreement.

Met w/ Ms. Thalia Dondero, Blain Claypool and Ray Watson at 10 am 1/11/94 gave her a copy of this packet.

RA 49

EMPLOYEE PERFORMANCE APPR L
(Received Dec. 8, 1992)

NAME: WATSON, RAY
POSITION TITLE: SECURITY OFFICER
DEPARTMENT: SECURITY
PERIOD COVERED/FROM: 1/30/92 TO: 1/29/93
PROBATIONARY __
ANNUAL XX
PROMOTION/TRANSFER __
OTHER _____

RATINGS:

OUTSTANDING	– Performance Consistently Above Standards
EXCELLENT	–Performance Above Standards on a Regular Basis
SATISFACTORY	–Performance Fully Meets Standards
UNSATISFACTORY	–Performance Falls Below Standards

****

PERFORMANCE CHARACTERISTICS

****

RATE THE FOLLOWING

I. QUANTITY/TIMELINESS OF WORK
The Level of satisfactory output

RATING: SATISFACTORY 20%

COMMENT:

Ray normally does his share of the work. However, has been counseled (verbally) about being in his assigned area. Since the counseling his performance has improved.

II. QUALITY OF WORK

Degree of accuracy, lack of errors. Overall excellence of output.

RATING: SATISFACTORY 20%

COMMENT:

The quality of his work is good but makes a few mental errors from time to time by forgetting to double check his work. Again he has been counseled in this area and improvement has been seen. Improvement should continue with proper attitude and guidenance [sic].

III. KNOWLEDGE/SKILL

Understanding of duties, performance of assigned tasks.

RATING: SATISFACTORY 20%

COMMENT:

Has been late two (2) times, but, no pattern is seen. Has a very good understanding of his assigned duties and normally performs his assigned tasks with little supervision. Ray has a tremendous amount of ability and could be a great asset if he electsto [sic] do so.

IV. DEPENDABILITY

Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.

RATING: SATISFACTORY 10%

COMMENT:

As mentioned above Ray has a tremendous amount of ability should he choose to use it. His knowledge of the rules and policies is very good and normally abides by them with little supervision. Has the ability to follow through with all assignments.

V. CONDUCT/BEHAVIOR

Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.

RATING: EXCELLENT 10%

COMMENT:

Very courteous with everyone and shows a good willingness to accept and profit from constructive counseling. Works well with his peers, with an excellent willingness to very [sic] his work schedule and assignments.

VI. ATTENDANCE

Promptness and regularity in being at work as scheduled.

RATING: EXCELLENT 10%

COMMENT:

Ray is usually prompt for work and has never called off. Often is call to work with short notice and readily accepts the assignment.

VII. PROCESSIONAL/PERSONAL APPEARANCE
Conformance to established dress codes and personal appearance.

RATING: SATISFACTORY 10%

COMMENT:

Was verbally counseled for failing to have the proper equipment, but, has compliedwith [sic] the established standards. His appearance is satisfactory.

OVERALL RATING FOR EVALUATION PERIOD:

SUMMARY OF STRENGTH

1. Excellent personality
2. Very dependable in coming to work.
3. Excellent abilities

SUMMARY OF DEVELOPMENTAL NEEDS

1. This job is secondary to Ray as he has a full time job. As a result he has a tendency to take this job alittle [sic] to [sic] lightly.
2. Needs to be more attentive to details at the job. As his [sic] gives the impression that he is just hanging out and visiting. By being more professional in his demeanor these things can be overcome.
3.

*EMPLOYEE COMMENTS (Only if Desired): _____

_____

_____

_____

PROBATIONARY PERIOD SATISFACTORILY COMPLETED: YES: X NO _

**EMPLOYEE'S SIGNATURE /s/ Ray Watson
Ray Watson

DATE: 12/3/92

EVALUATOR'S SIGNATURE /s/ Clifford Ortego
Clifford Ortego

DATE: 12-3-92

EVALUATOR'S SUPVR /s/ Michael Parker
Michael Parker

DATE: 12-4-92

---

* If you wish to discuss this evaluation with the Evaluator's Supervisor, indicate on this line.

** Signature indicates the employee has read, received a copy of the evaluation and it has been discussed with them. It does not mean they agree with the contents.

RA 54

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	5
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	4
III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	4
IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	4
V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	5
VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	9

VII.	Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance.	9
	Total Score	40

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	4
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	5
III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	6
IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	6
V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	6

VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	7
VII.	Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance.	6
	Total Score	40

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	4
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	4
III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	4
IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	4

V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	5
VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	7
VII.	Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance.	4
	Total Score	32

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	2
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	3
III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	3

IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	3
V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	9
VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	8
VII.	Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance.	8
	Total Score	36

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	3
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	2

III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	5
IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	4
V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	5
VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	6
VII.	Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance.	2
	Total Score	27

RA 60

MEMORANDUM
SECURITY SERVICES

Evaluation of Per Diem Personnel

Employees Name Ray Watson

Grade the above employee on a scale of 1 to 10 on the following areas. 1 being low and 10 the highest grade.

	Category	Grade
I.	Quantity/Timeliness of work . . . The level of satisfactory output	5
II.	Quality of Work . . . Degree of Accuracy, lack or errors.	7
III.	Knowledge/Skill . . . Understanding of duties, performance of assigned tasks.	7
IV.	Dependability . . . Ability to follow through with assignments on schedule & to follow policies & rules with minimum supervision.	5
V.	Conduct/Behavior . . . Professional manner, courtesy, acceptance and profit from constructive counseling. Ability to work with others effectively, willingness to vary work schedule/assignments as needed.	5
VI.	Attendance . . . Promptness and regularity in being at work as scheduled.	8

VII. Professional/Personal Appearance . . . Conformance to established dress codes and personal appearance. 7

Total Score 44

Affidavit of Michael Parker

State of Nevada)
) SS:
County of Clark)

Michael Parker, being first duly sworn and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this affidavit in support of Defendant's Motion for Summary Judgment.

3. That the one of the two officers selected for the full time Position was Pacific Islander, and the other officer selected was Caucasian.

4. That the job description for the position held by the plaintiff required A valid Nevada Drivers License. (Exhibit "A" Attached.)

5. That at the time which all eligible candidates were evaluated for the Full time position, Mr. Larry Mathis was present and participated in The evaluation process.

Further Affiant Sayeth Naught

/s/ Michael Parker
Michael Parker

Notarized by
/s/ Claudette P. Harrington
6/11/96

Affidavit of John Seeno

State of Nevada)
) SS:
County of Clark)

John Seeno, being first duly sworn and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this affidavit in support of Defendant's Motion of Summary Judgment.

3. That I was part of the team that was involved in doing evaluations. The team consisted of the following persons: Lt. John Seeno, Lt. Ken Allgood, Lt. Cliff Ortego, S/O Larry Mathis, S/O Ed Yesko and S/O Newton Yuen.

4. The evaluations were conducted on July 8, 1993 between the hours of 2:00pm to 3:15pm.

5. That S/O Larry Mathis was part of the evaluation team and did participate in the evaluation process.

Further Affiant Sayeth Naught.

/s/ John Seeno

Notarized by
/s/ Claudette P. Harrington
5/28/96

Affidavit of Newton Yuen

State of Nevada)
) SS:
County of Clark)

Newton Yuen, being first duly sworn and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Honolulu County, Hawaii.
2. That your affiant makes this affidavit in support of Defendant's Motion of Summary Judgment.
3. That I was part of the team that was involved in doing evaluations. The team consisted of the following persons: Lt. John Seeno, Lt. Ken Allgood, Lt. Cliff Ortego, S/O Larry Mathis, S/O Ed Yesko and S/O Newton Yuen.
4. The evaluations were conducted on July 8, 1993 between the hours of 2:00pm to 3:15pm.
5. That S/O Larry Mathis was part of the evaluation team and did participate in the evaluation process.

Further Affiant Sayeth Naught.

/s/ Newton Yuen 5-28-96

Subscribed and sworn to before me this 28th day of May, 1996.

/s/ Ginny L. Lee
Notary Public, State of Hawaii

My Commission Expires:
05/17/2000

Affidavit of Clifford Ortego

State of Nevada)
) SS:
County of Clark)

Clifford Ortego, being first duly sworn and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.
2. That your affiant makes this affidavit in support of Defendant's Motion of Summary Judgment.
3. That I was part of the team that was involved in doing evaluations. The team consisted of the following persons: Lt. John Seeno, Lt. Ken Allgood, Lt. Cliff Ortego, S/O Larry Mathis, S/O Ed Yesko and S/O Newton Yuen.
4. The evaluations were conducted on July 8, 1993 between the hours of 2:00pm to 3:15pm.
5. That S/O Larry Mathis was part of the evaluation team and did participate in the evaluation process.

Further Affiant Sayeth Naught.

/s/ Clifford J. Ortego

Notarized by
/s/ Claudette P. Harrington
5/28/96

Affidavit of Kenneth Allgood

State of Nevada)
) SS:
County of Clark)

Kenneth Allgood, being first duly sworn and states as follows:

1. That your affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.
2. That your affiant makes this affidavit in support of Defendant's Motion of Summary Judgment.
3. That I was part of the team that was involved in doing evaluations. The team consisted of the following persons: Lt. John Seeno, Lt. Ken Allgood, Lt. Cliff Ortego, S/O Larry Mathis, S/O Ed Yesko and S/O Newton Yuen.
4. The evaluations were conducted on July 8, 1993 between the hours of 2:00pm to 3:15pm.
5. That S/O Larry Mathis was part of the evaluation team and did participate in the evaluation process.

Further Affiant Sayeth Naught.

/s/ Kenneth Allgood

Notarized by
/s/ Claudette P. Harrington
5/28/96

DEFENDANTS EXHIBIT NO. B

MEMORANDUM
SECURITY SERVICES

TO: Ray Watson, Security Officer

FROM: Kenneth Allgood, Security Shift Supervisor

SUBJ: Verbal Counseling

DATE: June 8, 1993

You are receiving a verbal counseling for the incorrect processing of a patients personal property.

Date of error: 6/6/93

Patients Name: Kimbale, William

Discrepancy: Completed log book transaction incorrectly

On 6/6/93 you returned clothing to a patient. The log number was 559 and instead of logging out on the same line, you logged the items out on a separate line. This caused confusion and the log numbers were then duplicated, thus causing a domino effect of errors.

The bottom line is that you have enough experience that you should not be making these type [sic] of errors.

If you do need assistance in re-training or an explanation of procedure, please ask myself or any lieutenant and we will be more than willing to assist you.

/s/ Lt. Kenneth Allgood
Lt. Kenneth Allgood

/s/ Ray Watson
(Signature acknowledges receipt only)

RA 68

UMC
UNIVERSITY MEDICAL CENTER

To: Michael Parker, Director, Security Services

From: Clifford Ortego, Lieutenant, Security, Day Shift

Subject: Verbal Counseling on S/O R. Watson

Date: 6-5-93

On 6-4-93 at approximately 12:00pm you had the occasion to take the property of one: Sarah BROOKER in the emergency room. You filled out the clothing sheet (Form 958) listing only her clothing. You then placed the clothing form and her clothing in the clothing locker.

The following discrepencies were found. (1) You failed to get a nurse to witness and sign the inventory. (2) You failed to check the clothing for valuables as a Wallet with I.D. and one dime was found in the clothing. (3) Both copies of the inventory sheet was left in the locker. The Original goes with the chart and the pink stays with the patients property.

Finally, you are being verbally counseled for the above mentioned discrepencies as this is a prime example of why we have claims of lost property and patients leaving without their property. It is very important to follow

established policy and procedures. Further counseling will be dealt with progressively.

Signed: /s/ Ray Watson
S/O R. Watson

Signed: /s/ Lt. C. Ortego
Lt. C. Ortego

UMC
UNIVERSITY MEDICAL CENTER

To: Michael Parker, Director, Security Services

From: Clifford Ortego, Lieutenant, Security, Days

Subject: Verbal Counseling for S/O R. Watson

Date: 5-22-93

This To/From is being sent to inform you that I have given a verbal counseling to S/O Ray Watson for the incident described below:

On 5-22-93 at or about 11:00am S/O R. Watson prepared the Visitor Log for the 11:00am I.C.U visitors. While doing so, he put in the NFP patients names. This is contrary to the To/From dated May 13, 1993 which states that the letters N.F.P. should be put in where the patients name would normally go.

S/O Watson has been verbally counseled about this and instructed on the proper procedure and instructed to read

the To/From posted on the bulletin board within the Security Office.

Signed: Ray Watson
S/O R. Watson

cc: S/O Watson

UMC
UNIVERSITY MEDICAL CENTER

To: Michael Parker, Director, Security Services

VIA: Ray Watson, Security Officer, Security Services

From: Clifford Ortego, Lieutenant, Security, Services

Subject: Divulging Privileged Information

Date: 2-21-93

On 2-21-93 at approximately 1:20pm I received a call from Sally (RN, ICU, Trauma Center) reporting that Officer Ray Watson had breached Hospital Security by giving information out and showing the Hospital Census Sheet of patients in the Trauma Center.

This sheet shows where patients are, who the physician is, where they are located, why they are in the hospital, etc. This type of information is priviledged. [sic] Officer Watson showed the sheet to a female visitor who was inquiring about one SILVER (Patient in ICU).

I have verbally counseled S/O Watson on this matter. In addition, I have explained the policy and reason for not permitting anyone to read the Census Sheet.

Signed:
/s/ Ray Watson
S/O R. Watson

Date/Time:
2-21-93/2:00pm

Signed:
/s/ Lt. C. Ortego
Lt. C. Ortego

Date/Time:
2/21/93/2:00pm

BRIAN C. WHITAKER, ESQ.
RAWLINGS, OLSON, CANNON,
GORMLEY & DISRUISSEAUX
301 E. Clark Avenue, Suite 1000
Las Vegas, Nevada 89101
(702) 384-4012

Attorneys for Defendants
UNIVERSITY MEDICAL CENTER
MIKE PARKER and BILL ANDREWS

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

RAY WATSON, Plaintiff, vs. UNIVERSITY MEDICAL CENTER, MIKE PARKER, BILL ANDREWS, Defendants.	)	CASE NO. CV-S-95-795-HDM (RLH)

DECLARATION OF FRANCENE QUICK

I. Francene Quick declare as follows:

1: Declarant is over the age of eighteen (18) years.

2: Declarant currently resides at 3725 W. Harbor, Bettendorf, Iowa 52722.

3: Declarant makes this Declaration in support of Defendants' Motion for Summary Judgment.

4: Declarant was a Security Secretary at University Medical Center.

5: In order to schedule Ray Watson for an interview regarding a full-time security position to be filled in August of 1993, Declarant attempted to call Mr. Watson on Wednesday afternoon, all day Thursday, and Friday morning.

6: Declarant left several messages to call the director's office at his earliest convenience. Declarant did not talk to Mr. Watson personally until Friday around noon when he returned Declarant's calls.

7: I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that this Declaration was executed on this 3 day of March, 1996, Bettendorf, Iowa.

/s/ Francene Quick
Francene Quick

AFFIDAVIT OF JOHN SEENO

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JOHN SEENO, being first duly sworn deposes and states as follows:

1. That your Affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your affiant makes this Affidavit in support of Defendants' Motion for Summary Judgment.

3. That your Affiant is a Security Lieutenant at University Medical Center.

4. That in order to schedule Ray Watson for an interview regarding a full-time security position to be filled in August of 1993, your affiant attempted to call Mr. Watson during Affiant's regular scheduled shifts on Wednesday and Thursday evening. Affiant spoke to a woman and asked her to have Mr. Watson call either Affiant or the director's office at his earliest convenience.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ John Seeno
JOHN SEENO

SUBSCRIBED AND SWORN to before me
this 29th day of February, 1996.

/s/ Jeannett E. Bertoch
NOTARY PUBLIC In and For
Said County and State

[p. 1] UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAY WATSON, Plaintiff, vs. UNIVERSITY MEDICAL CENTER, MIKE PARKER, BILL ANDREWS, Defendants.	)	COPY Case No. CV-S-95-795-HDM (RLH)

DEPOSITION OF LONDA WATSON

Taken on Wednesday, May 29, 1996

At 3:53 o'clock p.m.

At 301 East Clark Avenue

Las Vegas, Nevada

Reported by: Anna Maria Halverson, CCR 188

* * *

[p. 20] A. Seldomly I take calls, anyway. Because he's home, and he takes a call by himself.

MR. WATSON: Counsel, excuse me, can we take a recess?

MR. WHITAKER: Well, let me finish my question.

BY MR. WHITAKER:

Q. In July of 1993, do you recall whether he received phone calls of any kind from UMC?

A. I cannot remember.

Q. Okay. So you could –

A. The calls – even when they call him for work, I can't remember the dates and the time either.

Q. So if I asked you for August, which would be the next month, you wouldn't be able to tell me?

A. I won't, no.

Q. You wouldn't be –

A. Because somebody –

MR. WATSON: Let's go off the record.

MR. WHITAKER: No, we're not off the record. She's still answering the question.

MR. WATSON: Off the record.

THE WITNESS: Would you like me to stop?

MR. WATSON: Yes, stop. Let's go off the record.

MR. WHITAKER: Well, we'll stay on the record.

MR. WATSON: I need to talk with her.

* * *

[p. 22] MR. WHITAKER: And you're doing that. I don't have a problem with that, but I don't understand why we have to interrupt it to take a break –

MR. WATSON: Okay, go on.

BY MR. WHITAKER:

Q. So if I go back to June of '93 the month before, would you be able to tell me how many times employees from UMC called?

A. No, I would not be able to tell you.

Q. If I went back to May of 1993, could you tell me how many times they called?

A. No.

Q. What you're saying is that they did call, you just don't know when they called?

A. I don't know when they called. I just know they called sometimes.

Q. In August of 1993, the month after July of '93, could you tell me whether anyone called from UMC or not?

A. They could have called. You know. Because he worked all that time, so –

Q. Right.

A. He worked in August – didn't you work in August? Yeah, he worked in August at UMC, so they must have called. Whenever they need him, they call.

Q. So you would have expected phone calls up until the [p. 23] point in time that –

A. I wasn't expecting.

Q. It just happened?

A. It just happens.

Q. And I guess what I'm gathering is that this isn't something you wrote down, so you don't have a specific recollection of when it happened?

A. Exactly.

Q. So you don't have a log at home that logs all the calls –

A. No.

Q. – that Ray received?

A. No.

Q. So you don't know when UMC called or why they called, they just called sometimes?

A. They called sometimes.

Q. And I guess on occasions you've indicated they would say we want Ray to come in and work on this day?

A. That's it.

Q. And on other occasions they wouldn't even tell you why they called? They'd just say have Ray call us?

A. That's right.

Q. When they said have Ray call us, you didn't ask the male or the female who called why they were calling?

A. No.

[p. 24] Q. That was none of your business? You just told your husband?

A. I just told him, yeah.

Q. Now, as far as your husband, has he ever talked to you about why he brought the lawsuit against University Medical Center?

A. I think he said – yes, I know why he did.

Q. Can you tell me what he told you as to why?

A. He said they discriminated against him.

Q. Did he tell you what he based that upon?

A. Yes.

Q. And what was it that he told you?

A. He told me they did not give him an interview, and they gave all the other guys interview, and he was the only black man.

Q. Is that what he told you, that he was the only black man who was being considered for the position?

A. No. He was the only black man together with the others, maybe six or seven others, he was the only black man entitled for that interview, and he did not get it.

Q. So he felt that he was entitled to the interview? Is that what he told you?

A. Yes.

Q. Is there anything else he told you about why he brought the lawsuit, or is that the sum of it?

In The Matter Of:

WATSON v.
UNIVERSITY MEDICAL CENTER

CARLOS HENDERSON
March 19, 1996

Western Reporting Services, Inc.
415 South Sixth Street
Suite 200
Las Vegas, NV 89101
(702) 474-6255 *FAX: (702) 474-6257*

Original File hendersn.asc, 69 Pages

Word Index included with this Min-U-Script®

* * *

[Page 53] Q: Do you know of any policy at UMC that would require, have required Mike Parker to give Ray Watson an interview?

A: I could not answer that request right now. No.

Q: Is there anything in the union contract – that's Exhibit A – that would have required Mike Parker to give Ray Watson an interview?

A: No.

Q: Were you aware that Mike Parker had supervisors rate each of the per diem employees who were applying for one of these two full-time positions?

A: Yes, we were aware of that, and the union was not in agreement with that procedure.

Q: What's your understanding of the procedure they used?

A: It was my understanding it had a one to ten scale or one to fifteen scale, some kind of scale.

Q: Do you know if Ray Watson was the only African American that applied for one of these two full-time positions?

A: I do not know.

Q: Do you know what the step two grievance hearing decision was?

A: Rather than not speak about it without having a copy of it in front of me, I cannot tell you in its [Page 54] entirety.

Q: Well, let me get one.

A: Thank You.

(A recess was taken from 11:24 a.m. to 11:26 a.m.)

(The reporter marked Exhibit B.)

Q: (BY MR. LEWIS) Mr. Henderson, let me show you what we have marked as Exhibit B. Do you recognize that document?

A: (Witness perusing document.) Most certainly.

Q: Is that the decision from the step two grievance?

A: Yes, it is, sir.

Q: Do you know why that document wouldn't be in the union's file?

A: Well, there are times when things get misplaced. We have three different offices, and things get misplaced.

Q: So typically it would be in the file?

A: Yeah. I'm certain you have lost documents in your office.

Q: Oh, we sure have. I just wanted to know if there is any other reason.

A: No. That's the first thing I stated when I came in here.

Q: Now, this decision says: Also reinstate Ray Watson on a per diem with opportunity to improve on weaknesses as [Page 55] stated in the management review.

Was the offer ever made to Ray Watson that he could come back to work as a per diem employee for UMC?

A: You see in that – you see in that decision, it was offered.

Q: That was offered?

A: That's in the decision. Right there. That's what I'm saying. It's in this decision.

Q: I don't understand what you're saying.

A: What I'm saying – well, let me clear it up. You asked the question about per diem offer to Ray Watson.

I stated to you – I should state to you if you would read the November 9, 1993 decision given by the hearing officer, it states it right in there.

Q: States what?

A: States down here at the very bottom. Okay. Let's see: Based on the testimony evidence presented, I feel that Mike Parker did not discriminate on the basis of race although, as stated before, it may give the appearance of discrimination, since Ray Watson was the only African American who was recommended for an interview and did not get one. I feel UMC administration should write a policy for criteria to receive interview, also reinstate Ray Watson on a per diem with the opportunity to improve on weaknesses as stated in the management review, and if improvement is [Page 56] made, he should be given an interview on the next full-time opening in the department. Mr. Watson's request to be reinstated as a full-time employee with back pay is denied.

Q: Now, Mr. Watson couldn't have been reinstated as a full-time employee, could he?

A: The only thing – I'm not sure of that. I – excuse me.

Q: Well, was Ray Watson ever a full-time employee at UMC?

A: Ray Watson was a per diem employee.

Q: So was he ever a full-time employee? Yes or no.

A: As far as I'm concerned, he was not.

Q: So he couldn't be reinstated as one, because he had never been one, could he?

A: I beg to differ with you. I beg to differ with you, because management can do whatever they want. So I beg to differ with you with that.

Q: All right. So was Ray Watson offered per diem employment after this decision?

A: I have no knowledge of that, sir.

Q: You weren't in a meeting with Kathy Silvers, Blaine Claypool and Mike Parker where an offer to Ray Watson was made for per diem employment with zero hours?

A: No. I – I don't thing so. Give me the time and place. I don't – I don't recall that. No, I don't.

UMC
UNIVERSITY MEDICAL CENTER

CC
CLARK
COUNTY
PUBLIC
EMPLOYEES
ASSOCIATION PEA

SEIU Local 1107

AGREEMENT
between UNIVERSITY MEDICAL CENTER
and CC PUBLIC EMPLOYEES ASSOCIATION

FEBRUARY 18, 1992
to JUNE, 1993

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PUBLIC EMPLOYEES/SERVICE EMPLOYEES
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AGREEMENT BETWEEN
UNIVERSITY MEDICAL CENTER
OF SOUTHERN NEVADA
AND
THE CLARK COUNTY
PUBLIC EMPLOYEES ASSOCIATION, INC./
SEIU LOCAL 1107

RA 86

FEBRUARY 18, 1992
to
JUNE 30, 1993

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ARTICLE 5
Management Rights

1. UMC is entitled, without negotiation, to the sole right and authority to operate and direct the affairs of UMC in all its various aspects. Those rights include but are not limited to the following:

   (a) Hire, direct, promote, assign, transfer, or take disciplinary action against any employee, but excluding the right to harass an employee through reassignment or transfer as a form of discipline. Transfers and reassignments for the improvement of personnel staffing and utilization shall not be deemed a form of discipline.

   (b) Reduce in force or lay off any employee because of lack of work, low census conditions, lack of funds, or for other conditions. In exercising this right, UMC shall comply with all other provisions of the Nevada Revised Statutes, if any.

   (c) Determine appropriate staffing levels and staffing ratios, job assignments, work schedules, shift assignments, the starting time for each shift, and performance standards.

   (d) Determine the content of the work day including, without limitation, work load factors.

   (e) Determine the quality and quantity of services to be offered to the public, the means and methods of offering those services, and to change such methods or procedures, including the use of new equipment or facilities.

   (f) Extend, limit, curtail or subcontract its operations, including the right to use the services of registry/agency personnel.

   (g) Promulgate, revise and modify rules, regulations and personnel policies.

(h) Take whatever actions may be necessary to carry out its responsibilities in situations of emergency.

2. All rights and responsibilities of UMC not specifically modified by the Agreement shall remain the functions of UMC. The above enumerated management rights shall not contravene the expressed terms of this Agreement and shall be subject thereto.

ARTICLE 6
Employee Rights

1. Neither UMC nor the Union shall interfere with the right of the employees covered by this Agreement to become or not become members of the Union, and there shall not be discrimination against any such employees because of lawful Union membership or nonmembership activity or status. The right to join and participate in authorized and appropriate Union functions shall be recognized

* * *

ARTICLE 11
Per Diem Employees

1. This Article sets forth the terms and conditions of Per Diem employment. Requirements for maintaining Per Diem status are established by UMC. Per Diem Employee work assignments add to or substitute for staff on a pre-scheduled basis or as needed on a day to day basis, as determined by UMC. Per Diem Employees may be scheduled or not scheduled, or called off from a pre-established schedule. Additionally, a Per Diem Employee's eligibility for scheduling may be discontinued at any time at the sole discretion of UMC and without recourse to the grievance and arbitration procedures or discipline appeal

procedures of this Agreement. Beginning with the 2081st hour worked a per diem employee, upon written request, shall be entitled non-competitively to the next available regular position in their classification.

2. Per Diem Employees are not eligible for shift differential or for other benefits unless specified in this Agreement. Per Diem Employees are not eligible for paid leave or holidays.

3. Per Diem Employees are covered by the following Articles of this Agreement: Agreement, Intent, Recognition, Discrimination Clause, Management Rights, Per Diem Empolyees, General Savings Clause, Duration, Overtime Eligibility, Employee Deduction, Union Rights, Employee Rights, Worker's Compensation, Hazards of Work, and the related portion of the salary article. Per Diem Employees may use the grievance and arbitration procedures of the Agreement only with respect to alleged violations of those Articles by which they are covered.

4. The Per Diem Employee shall call in to verify the availability of work prior to reporting to work.

5. Per Diem Employees assigned to on-call status who are called into work from such status shall be assigned by UMC to perform available work.

6. Per Diem Employees who work on New Year's Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day shall be paid at the rate of one and one-half ($1^1/_2$) times the regular rate of pay for the hours actually worked.

ARTICLE 12
Personnel Layoff, Recall and Appeal Procedure

Layoff is defined as any involuntary separation wherein management eliminates a position without prejudice to the incumbent.

The determination of the number of positions, classifications and departments to be affected by a layoff is a management right. UMC and the Union agree that layoff and recall of personnel and appeals of these actions as it pertains to employees covered under this Agreement shall be prescribed below.

AFFIDAVIT OF KATHY SILVER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

KATHY SILVER, being first duly sworn deposes and states as follows:

1. That your Affiant is over the age of eighteen (18) years and is a resident of Clark County, Nevada.

2. That your Affiant makes this Affidavit in support of Defendants' Motion for Summary Judgment.

3. That your Affiant was Senior Associate Administrator, Marketing and Human Resources at University Medical Center.

4. That your Affiant attended a meeting with Mike Parker, Director of Security Services at UMC; Blain Claypool, Assistant Administrator at UMC; Ray Watson; and Carlos Henderson, CCPEA Representative. Affiant states that during this meeting, an offer of employment, as a per diem security officer with zero hours, was made to Ray Watson.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Kathy Silver
KATHY SILVER

SUBSCRIBED AND SWORN to before me this 1st day of March, 1996.

/s/ Linda A. Lewis
NOTARY PUBLIC In and For Said
County and State

[LOGO]

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TO: Carlos Henderson, CCPEA Representative

FROM: Lynn Huff, Director Hospital Affiliate Services, Hearing Officer

RE: DECISION OF GRIEVANCE SUBMITTED BY RAY WATSON

DATE: September 22, 1993

---

1. On September 7, 1993, a Step 1 grievance hearing was held in accordance with Article 9 of the Agreement between UMC and the CCPEA. Evidence and testimony was reviewed in connection to the grievant being denied the opportunity of a full-time position because he was denied an interview. He believes he was denied an interview due to racial discrimination of the Director of Security, Michael Parker.

2. During the hearings, Michael Parker, Director of Security, stated that 2 full-time positions were posted for Security Officers. Ray Watson, a per diem officer within the Security Department was one of the applicants who applied for the positions. Michael Parker interviewed approximately 6 or 7 applicants for the two positions all of whom came from the per diem

pool. Michael Parker provided the following justification for not interviewing Ray Watson:

1. Verbal Counseling regarding the Divulging of Privileged Information on 02/21/93.

2. Verbal Counseling regarding the preparation of Visitor Log contrary to the TO/FROM date May 13, 1993 on 05/22/93.

3. Verbal Counseling regarding the breach of Departmental Policy and Procedures concerning filling of clothing sheet (Form 958) on 06/05/93.

4. Verbal Counseling regarding the incorrect processing of a patients personal property on 06/08/93.

5. Evaluation Tool of all Per Diem Personnel grading the employee on a scale of 1-10 in various areas by the lead officers and supervisors. Ray Watson received a score ranking him 12th out of 12.

6. Employee Performance Appraisal period covered 1/30/93 through 1/29/93 over rating satisfactory.

Two (2) written statements were received stating that attempts were made to contact Ray Watson during the week of August 16. On August 18, 1993 the schedule reflecting the newly hired permanent employees was posted. On August 22, 1993 a meeting was held involving Ray Watson and Michael Parker. This meeting resulted in Michael Parker informing Ray Watson he would be ineligible for Per Diem Employment.

I have thoroughly reviewed the testimony and evidence presented in this Step 1 hearing.

The fact that Ray Watson was not given an interview for the two full-time positions posted is a decision entitled to Management per the CCPEA Contract Article 5 Section 1 – a. The manager is given the authority to select from the pool of applicants those persons who he feels are qualified applicants. Adequate justification was presented by Michael Parker as to the reasons he felt Ray Watson was not a qualified applicant. Additionally, Michael Parker's decision to deem Ray Watson ineligible for Per Diem employment was in accordance to CCPEA Contract Article 11 Section 1. Based on the evidence presented, the decisions made by management were within the scope of his authority and were supported with evidence that the employee was not qualified furthermore, the decisions were not found to be racially motivated and therefore do not reflect any racial discrimination. It is my decision to uphold the action of Management, the ineligibility of Ray Watson stands.

cc: Labor Relations File
Mike Parker, Director, Security
Ray Watson, Grievant
Blain Claypool, Assistant Administrator

UNIVERSITY MEDICAL CENTER
GRIEVANCE HEARING
FILE: GRIEVE/WATSON

TO: Dianna Streuber, Chief Steward CCPEA

FROM: Bill Andrews, Internal Auditor/ Hearing Officer

SUBJECT: Ray Watson's Grievance (2nd Step)

DATE: November 9, 1993

On November 4, 1993, at 10:30 AM, a hearing was held for Ray Watson's grievance. Mr. Watson was a per diem Security Officer for the hospital. Mr. Watson is claiming discrimination for not being interviewed for a full-time position as a Security Officer. He wants reinstatement as a full-time employee with back pay.

Evidence and testimony were reviewed in connection with the discrimination claim by Ray Watson. Present at the hearing were the grievant; Carlos Henderson, CCPEA Rep; and Mike Parker, Director of Security.

In reviewing the written evidence and testimony, I have found the following:

1) There is no written policy at UMC stating that an applicant for a job is assured an interview.

2) Mr. Parker submitted sufficient documentation stating why Mr. Watson was not interviewed for the full-time position. (such as: divulging privileged information, improper processing of patient's personal property,

and per diem employee evaluation done by department supervisors ranking him 12th out of 12.)

3) There were 7 or 8 applicants, including Mr. Watson, sent to Mr. Parker for an interview. All were interviewed for the position except Mr. Watson. Mr. Watson was the only African-American who applied. This *may give the appearance of discrimination.*

Based on the testimony and evidence presented I feel that Mike Parker did not discriminate on the basis of race. Although as stated before, it may give the appearance of discrimination since Ray Watson was the only African-American who was recommended for an interview and did not get one. I feel UMC Administration should write a policy for criteria to receive an interview. Also, reinstate Ray Watson on per diem with the opportunity to improve on weaknesses as stated in the Management Review, and if improvement is made, he should be given an interview on the next full-time opening in the department. Mr. Watson's request to be reinstated as a full-time employee with back pay is denied.

cc: Bernard Turk, Director of Labor Relations
Jean Harper, Coordinator of Labor Relations
Ray Watson, Grievant
Mike Parker, Director of Security
Blain Claypool, Assistant Administrator

FILED

SEP 11 1998

OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

No. 97-2078

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1997

Ray Watson,

Petitioner,

v.

University Medical Center, Mike Parker, Bill Andrews,

Respondents

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

REPLY BRIEF IN OPPOSITION

Ray Watson, Pro Se
608 Marcella
Las Vegas, Nevada, 89030
(702) 642-5702

11pp

i

Questions Presented for Review

1.

Petitioner did not allege a claim of conspiracy in his complaint, nor did he endeavor to prove such claim. Petitioner brought a claim of discrimination against the respondents. However, the trial court misrepresented clear facts and simply concluded that a claim of conspiracy had been brought and was not proven by petitioner. Did the trial and appellate courts:

(a) abuse their discretion and violate petitioners' due process rights by granting a summary judgment on fictitious grounds ?

(b) Depart from the usual and accepted judicial procedures.

2.

In Anderson v. Liberty Lobby Inc., 477 U.S. 242, this court held that only "*material facts*" would preclude the entry of summary judgment. Petitioner submitted affidavits that created a genuine issue of material fact that would have affected the outcome of a trial.

(a) Were these affidavits sufficient to defeat a motion for summary judgment ?

(b) Did the court abuse its discretion by failing to accept petitioners' affidavits and other allegations as true ? *Catrone v. 105 Casino Corporation, 414 P 2d, 106 Nevada Supreme Court.*

(c) Does the decisions of the trial court, and subsequent affirmation by the appellate court, conflict with Anderson.?

3.

Petitioner established many genuine issues of material fact demonstrating that the defendants proffered nondiscriminatory reasons were unworthy of credence. Are these genuine issues of material fact sufficient to defeat a summary judgment in light of this courts' holding in *Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981).*

4.

Petitioner's contractual rights in Article 1V of his union contract, as well as University Medical Center policies ("UMC"), prohibited discrimination in employment, promotion and all areas of work life. Respondent Mike Parker refused to grant petitioner, the only black applicant for two full-time security positions, an interview. Petitioner was the most senior applicant and had received prior satisfactory evaluations from respondent Parker.

Parker interviewed seven other applicants, while holding that his reasons for denying petitioner an interview was based on a *"survey"* conducted in lieu of established governmental policies regarding evaluations. In his decision, the UMC Hearing Officer decided that petitioner should be reinstated and given an opportunity for the next full time position. Parker did neither. The questions for this court are:

(a) Can a public employee be denied his constitutional rights to property by a ad hoc *"survey"* arbitrarily substituted for the legally approved evaluation process established by this political subdivision ?

(b) Can a public employee be denied an interview for a position in light of the contractual and governmental policies prohibiting discrimination in promotion and employment ?

(c) In light of Hearing Officer Bill Andrews' decision that petitioner should be reinstated and given and opportunity to interview for the next full-time position, does respondents have the right to disregard his decision ?

5.

In Haines v. Kerner, 404 U.S. 519, this court held that a pro se litigant's complaint must not be dismissed unless it appears beyond a doubt, that *"he cannot get relief under any set of facts"*.

(a) Does the true and material facts of this case demonstrate, beyond a reasonable doubt, that petitioner should have been afforded his constitutional right to trial on the merits ?

(b) Does the dismissal of petitioners' claims conflict with the principles reached in Haines ?

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Jurisdiction

The date the Ninth Circuit court of Appeals decided my case was December 15, 1997. A timely petition or rehearing was denied by the United States Court of Appeals on March 27, 1998 and a copy of the order denying rehearing appears the petition at **A7.**

I. "Substantial Evidence Contradicting Employer's Proffered Evidence of Non-discriminatory Motivation in Promotion Precludes Summary Judgment"

Petitioner requests this court review Godwin v. Hunt Wesson, Inc., 96-56830 (9th cir), filed August 11, 1998, which is new, controlling case law decided while this case was pending. This new law will affect the outcome of this petition. The court held in Godwin that "*A close review of our decisions reveals that in this circuit a plaintiff who offers substantial evidence that the employer's proffered reasons were not reliable, see e.g., Lindahl v. Air France, 930 F.2d 1434, 1438-39 (9th Cir.) 1991), or direct evidence of discrimination, see e.g. Cordova v. state Farm Ins. , 124 F 3d 1145, 1150 (9th Cir. 1997) has made a sufficient showing to create triable issues with respect to the employer's motivation*". The court continued "*Although shifting explanations are acceptable when viewed in the context of other surrounding events..... **such weighing of evidence is for a jury, not a judge.** Payne v. Northwest Corp., 113 F 3d. 1079, 1080(9th Cir. 1997)*".

II. "No Weighing of the Evidence"

Respondent Parker alleges that Lead Officer Larry Mathis participated in his "*survey*" and that he had submitted an unsigned, undated evaluation of petitioner. RA 62-66. However, Mathis submitted an affidavit stating he was not asked, nor did he participate in Respondent's unofficial, *ad hoc* evaluation. Petitioner's exhibit A 22. Obviously Respondents statement to the Hearing Officer is in conflict with the affidavit of Mathis and calls into question the overall credibility of Parker's proffered non-discriminatory reasons. *Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981).*

On page 17 of Respondent's opposition brief he states: "*Assuming arguendo petitioner's contention that Larry Mathis did not participate is correct, (despite the clear factual evidence that disagrees with this), this court must ask itself what effect removing Mr. Mathis from the evaluation survey may have had on petitioner's claims. Clearly the answer is "none"*. Counsel is asking the highest the HIGHEST COURT IN THIS LAND to weigh evidence in a motion for summary judgment. The only reason this ludicrous case is before this prestigious body is because the lower courts weighed the evidence.

Counsel is well aware that if any genuine issue of material fact exists, *it is not the function of any court to weigh that evidence. Even if the weight or believability of the evidence is clearly in favor of one party, the other party is entitled to a trial by jury to determine the facts.* Anderson v. Liberty Lobby, Inc., 477 U S 242. (1986). As a matter of law, this court must reject counsel's request to weigh evidence. Conflicting affidavits regarding Respondent Parker's ad hoc survey speak volumes as to genuine issues of material fact sufficient to defeat a motion for summary judgment.

III. Both Courts Ruled Petitioner Was Qualified

On one hand, Parker stated that his reason for not interviewing petitioner was that he was **not qualified**. RA 94-95. On the other hand, he contended that Francine Quick and John Seeno **called petitioner for an interview**. RA 72-73. This is a clear example of conflicting, pretextual "*shifting explanations*" [1] by Respondent Parker, which he employed to discriminatorily deprive petitioner of equal protection of the law. *Payne v. Northwest Corp., 113 F 3d. 1079, 1080 (9th Cir. 1997).*

However, both courts resolved the "*qualification*" issue. In RA 95, par. 2 of the opposition brief, the Respondents state: "*Adequate justification was presented by Mike Parker as to the reasons he felt Ray Watson was not a qualified applicant.*" Then on page 16, the Respondents wrote: "*In this case, the initial establishment of a prima facia case was held by judge McKibben to be met. Petitioner belongs to a protected minority class; established he was minimally qualified for the full time security officer position....*" Moreover, the Appellate court affirmed the district courts decision that petitioner was qualified. Since the both the district and appellate courts agreed that petitioner was qualified, obviously Respondent's "*shifting*" proffered non-discriminatory reasons lack credibility and the matter must be determined by a jury. Burdine Id at 1095.

IV. Hearing Officer Decision is not a "*Suggestion*"

Petitioner reminds the court of rule 15.2 which admonishes counsel that "*they have an obligation to the court to point in the brief in opposition, and not later, any perceived misstatement made in the petition*".

---

[1] Godwin v. Hunt Wesson, Inc., 96-56830 (9th Cir., 1998)

Yet on page 2 of his brief in opposition, counsel deliberately attempts mislead this court by misstating petitioner's allegations. Counsel writes:

> *"He further argued UMC failed to comply with **suggestions** from Hearing Officer William Andrews, that UMC provide petitioner with an interview on the next full time opening in the department"*

Counsel's statement is disingenuous and dissimulates the true facts. Pursuant to his legislative authority, the hearing officer made a decision. Counsel's misplaced characterization that his decision was a *"suggestion"* should offend the intelligence of this court. In fact, the hearing officer wrote:

> *"I feel UMC administration should write a policy for criteria to receive an interview. Also, **reinstate Ray Watson** on per diem, with the opportunity to improve on weaknesses as stated in the management review, and if improvement is made, he should be given an interview on the next full time opening in the department."*

Counsel dissimulates the statement and also conveniently omits the fact that the decision required that petitioner be **"reinstated"**[2] and then given interviews under the above conditions. Counsel is well aware that issue alone is a material fact and is sufficient to defeat a motion for summary judgement. Anderson v. Liberty Lobby, 477 U.S. 242,248 (1986); Haines v. Kerner, U S 404, 519

To circumvent the Hearing Officers' decision that petitioner should be reinstated, Respondents alleged that they *"still offered Petitioner employment. Indeed he was given an opportunity at UMC on a per diem basis starting with zero hours again. RA 92 . Petitioner refused."* Reinstatement as defined in Black's law dictionary, is *"to put back, or establish again, as in a former position or state."* **It does not mean** to *invent, create, manipulate* or *alter* in any manner, the clear, unambiguous meaning of the word attempting to refine the hearing officer's decision.

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[2] Reinstate: **To put back, or establish again, as in a former position or state.**

Reinstatement could have been accomplished by the stroke of the pen, a one-line letter, a brief telephone call or a messenger.

Furthermore, the *"zero-hour-job-issue"* was pretextual and only surfaced after petitioner filed this action. Petitioner presented the affidavit of Carlos Henderson which clearly contradicts this eleventh hour, pretextual affidavit by Respondents. Petitioner's exhibit A20. Finally, the willful refusal to comply with the hearing officer's unambiguous decision demonstrates discriminatory animus, is a serious violation of petitioner's due process rights and must be heard by a jury.

V. Respondent's Ad Hoc Evaluation Discriminatory

Respondent Parker admittedly created a spontaneous *"survey"* that was *"inconsistent"* with UMC authorized evaluation process. RA 46. This so-called *"survey"* , was designed by Respondent Parker to disqualify petitioner for an interview. In stark contrast with his ad hoc *"evaluation by committee"*, Respondent Parker's official UMC evaluation of petitioner (RA 49), rated Petitioner's CONDUCT/BEHAVIOR as *"Excellent"*.. A reading of his evaluation shows either *"Excellent" of "Satisfactory"* ratings by Respondent Parker and he even concludes with the OVERALL RATING with glowing, profuse comments as:

1. Excellent personality
2. Very dependable coming in to work
3. Excellent ability

Clearly, Respondent Parker's ad hoc evaluation was inconsistent with the official evaluation process and a jury must decide if his surprise *"survey"* is a pretextual vehicle for his discriminatory conduct. Parker provided no notice to petitioner of his departure from the official UMC evaluation procedure, nor any evidence that his *"survey process"* was universally applied to all departments of UMC. Clearly, his *"survey"* was concocted to discriminatorily deprive petitioner of equal protection of the law. This is a genuine issue of material fact that must be heard of a jury.

"If you can't fight on the law, fight on the facts.
If you can't fight on the facts, fight dirty....."

Clearly, that old adage applies to counsel's insidious arguments. On page 24 and 25 his opposition brief, he attempts to mislead this court with completely irrelevant, non-applicable cases.

Knowing full well that these citations are disingenuous and misplaced, he prefaces the nonsense on page 24 with "*Although not directly raised in District court, one wonders whether the facts of this case sustain a claim of administrative res judicata*..... He continues stating; "*In this case, petitioner had a hearing before the administrative board designed to resolve the disputes which are raised in the instant complaint. The final determination of these facts by those officers that nothing improper was done should also bar the resurrection of those claims at this time.*"

Is this licensed attorney arguing to the Highest Court in the land that an administrative hearing somehow preempts a citizen's constitutional right to judicial review? The doctrine of res judicata is only revelant in employment cases where an employee fails to exhaust all of his administrative remedies prior to seeking judicial review. No adverse administrative employment decision, by itself, automatically preempts or bars a citizen from his constitutional right to judicial access. Moreover, for counsel to submit such nonsense to this prestigious court, pretending to "*wonder*", is clearly disrespectful and patently disingenuous. Even more repugnant, is his admission that while this nonsense was not raised in district court, he still insists on sneaking in clearly inadmissible arguments pretending to "*wonder*". Wondering, like weighing of the facts, is the province and prerogative of a jury.

VI. If *Wondering* is Admissible.....

In light of all the conflicting material facts, and binding case law covering motions for summary judgments, it is Petitioner who should be "*wondering*". Petitioner should "*wonder*" how a simple summary judgment case, **with more genuine issues than bombs in a Iraqi minefield,** could require the valuable time and scrutiny of the highest court in the land. He also should wonder why two lower courts *weighed evidence* and affirmed this preposterous case? But there is not need for any of us to "*wonder*". *Wondering*, or weighing the facts, is reserved for a jury of petitioner's peers.

In Haines v. Kerner, U.S. 404, 519, this court has held that "*it must be beyond any doubt that a pro se litigant cannot get relief under any set of facts*". Neither the Respondents or the lower courts have "*answered the bell*" required by Haines; notwithstanding the clear and unambiguous holdings articulated in Anderson. Id. at 248.

Conclusion

It is tautological but must be restated by petitioner. *"Because the trial and appellate decision violate petitioner's constitutional right to trial, it is in direct conflict with Anderson,Burdine, Catrone, Haines and other controlling case law. For these compelling reasons the memorandum decision of the Ninth Circuit Court of Appeals should be summarily reversed, vacated and this action remanded to United States District Court for the District of Nevada. In the alternative, the petition for a writ of certiorari should be granted*

Respectfully submitted,

Ray Watson